Montana Code Annotated
2001

Taxation • Alcohol & Tobacco • State Finance
Public Contracts • Public Retirement Systems

MONTANA CODE ANNOTATED
Adopted by Chapter 1, Laws of 1979

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CONTENTS

Volume 1

Preface

CONSTITUTION

Titles
1. General Laws and Definitions
2. Government Structure and Administration
3. Judiciary, Courts
4. Reserved
5. Legislative Branch
6. Reserved

Volume 2

Titles
7. Local Government
8 and 9. Reserved
10. Military Affairs and Disaster and Emergency Services
11 and 12. Reserved
13. Elections
14. Reserved

Volume 3

Titles
15. Taxation
16. Alcohol and Tobacco
17. State Finance
18. Public Contracts
19. Public Retirement Systems

Volume 4

Titles
20. Education
21. Reserved
22. Libraries, Arts, and Antiquities
23. Parks, Recreation, Sports, and Gambling
24. Reserved
25. Civil Procedure
26. Evidence
27. Civil Liability, Remedies, and Limitations
28. Contracts and Other Obligations
29. Reserved

Volume 5

Titles
30. Trade and Commerce
31. Credit Transactions and Relationships
32. Financial Institutions
33. Insurance and Insurance Companies
34. Reserved

Volume 6

Titles
35. Corporations, Partnerships, and Associations
36. Reserved
37. Professions and Occupations
38. Reserved
39. Labor

Volume 7

Titles
40. Family Law
41. Minors
42. Adoption
43. Reserved
44. Law Enforcement
45. Crimes
46. Criminal Procedure
47 and 48. Reserved
49. Human Rights

Volume 8

Titles
50. Health and Safety
51. Reserved
52. Family Services
53. Social Services and Institutions
54-59. Reserved
60. Highways and Transportation
61. Motor Vehicles
62-66. Reserved
67. Aeronautics
68. Reserved

Volume 9

Titles
69. Public Utilities and Carriers
70. Property
71. Mortgages, Pledges, and Liens
72. Estates, Trusts, and Fiduciary Relationships
73 and 74. Reserved
75. Environmental Protection
76. Land Resources and Use
77. State Lands
78 and 79. Reserved

Volume 10

Titles
80. Agriculture
81. Livestock
82. Minerals, Oil, and Gas
83 and 84. Reserved
85. Water Use
86. Reserved
87. Fish and Wildlife
88 and 89. Reserved
90. Planning, Research, and Development
91-99. Reserved

INDEX

TITLE 15

TAXATION

Ch.
1. Tax Administration.
2. State Tax Appeal Board.
Chapters 3 through 5 reserved.
6. Property Subject to Taxation.
7. Appraisal.
8. Assessment Procedure.
9. Equalization.
10. Property Tax Levies.
Chapters 11 through 14 reserved.
15. Property Tax Appeals.
16. Collection of Property Taxes.
17. Tax Sales.
18. Ownership Interests in Land Sold for Taxes.
Chapters 19 through 22 reserved.
23. Centrally Assessed Property.
24. Special Property Tax Applications.
25. Dangerous Drug Tax. Repealed.
Chapters 26 through 29 reserved.
30. Individual Income Tax.
31. Corporation License or Income Tax.
32. Energy-Related and Ecological Tax Incentives.
33. Small Business Investment Incentives.
34. Coal Producer's License Tax. Repealed.
35. Coal Severance Tax.
36. Oil and Gas Production Tax.
37. Mining License Taxes.
38. Resource Indemnity Trust Tax.
Chapters 39 through 43 reserved.
44. Forest Lands Tax.
Chapters 45 through 49 reserved.
50. Public Contractor's Fees and Tax.
51. Electrical Energy Producer's License Tax.
52. Collection of Transportation and Communications License Taxes. Repealed.
53. Retail Telecommunications Excise Tax.
54. Express Company License Tax. Repealed.
55. Freight Line Company License Tax. Repealed.
56. Sleeping Car Company License Tax. Repealed.
57. Store Licenses. Repealed.
58. Coal Retailer's License Tax. Repealed.
59. Cement Taxes.
60. Nursing Facility Utilization Fee.
61. Medical Care Savings Account.
62. Family Education Savings Act.
63. First-Time Home Buyer Savings Account.
Chapter 64 reserved.
65. Lodging Facility Use Tax.
Chapters 66 through 69 reserved.
70. Gasoline and Vehicle Fuels Taxes.
71. License Tax on Vehicles Propelled by Liquefied Petroleum Gas.
72. Electrical Generation Tax.

CHAPTER 1

TAX ADMINISTRATION

Part 1 — General Provisions

15-1-101. Definitions.
15-1-102. Person defined.
15-1-103. Destruction of tax records authorized — procedure.

15-1-104. Treasurers to destroy certain tax records.
15-1-105. Repealed.
15-1-106 through 15-1-110 reserved.
15-1-111. Reimbursement to local governments and schools — duties of department and county treasurer — statutory appropriation.
15-1-112. Business equipment tax rate reduction reimbursement to local government taxing jurisdictions.
15-1-113. Reimbursement payment.
15-1-114 and 15-1-115 reserved.
15-1-116. Manufactured home considered as improvement to real property — requirements.
15-1-117. Reversal of declaration — exception.
15-1-118 and 15-1-119 reserved.
15-1-120. Policy and purpose.
15-1-121. Entitlement share payment — appropriation.
15-1-122. Fund transfers.

Part 2 — Department of Revenue

15-1-201. Administration of revenue laws.
15-1-202. Enforcement of revenue laws.
15-1-203. Study of other tax systems.
15-1-204. Consultation with governor.
15-1-205. Biennial report — contents.
15-1-206. Waiver of penalties — interest.
15-1-207. Writeoff of collection of tax, penalty, or interest — rules.
15-1-208. Signature alternatives for electronically filed returns.
15-1-209 and 15-1-210 reserved.
15-1-211. Uniform dispute review procedure — notice — appeal.
15-1-212 through 15-1-215 reserved.
15-1-216. Uniform penalty and interest assessments for violation of tax provisions — applicability — exceptions.
15-1-217. Rulemaking authority.
15-1-218 through 15-1-220 reserved.
15-1-221. Short title.
15-1-222. Taxpayer bill of rights.
15-1-223. Office of taxpayer assistance.
15-1-224 through 15-1-229 reserved.
15-1-230. Report on income tax credit to committee.
15-1-231. Payment of individual income taxes by credit card and other commercially acceptable means.

Part 3 — Investigation and Hearings

15-1-301. Investigations by department.
15-1-302. Witnesses — oaths, contempt, and fees.
15-1-303. Penalty for refusal to furnish information.

Part 4 — Protest Payments, Actions to Recover, and Alternative Remedies

15-1-401. Repealed.
15-1-402. Payment of taxes under protest.
15-1-403. Repealed.
15-1-404. Other remedies superseded.
15-1-405. Injunction not to be used to restrain enforcement of tax.
15-1-406. Declaratory judgment.
15-1-407. Alternative remedy — procedure.
15-1-408. Alternative remedy — judgment.
15-1-409 through 15-1-420 reserved.
15-1-421. Payment of taxes by negotiable instrument.

Part 5 — Disposition of Tax Proceeds

15-1-501. Disposition of money from certain designated license and other taxes.
15-1-502. Repealed.
15-1-503. Refund of overpayment — procedure.
15-1-504. Settlement of county treasurer with department.
15-1-505. Repealed.
15-1-506. Repealed.
15-1-507 through 15-1-515 reserved.
15-1-516. Terminated.
15-1-517 through 15-1-520 reserved.
15-1-521. Property valuation improvement fund.

Part 6 — Multistate Tax Compact

15-1-601. Compact adopted — text.
15-1-602. Montana compact commissioner — director of revenue.
15-1-603. Alternate.
15-1-604. Not codified.

Part 7 — Collection of Delinquent Taxes—Warrant for Distraint

15-1-701. Warrant for distraint.
15-1-702. Issuance of warrant.
15-1-703. Emergency issuance of warrant.
15-1-704. Filing with district court.
15-1-705. Review.
15-1-706. Execution upon warrant.
15-1-707. Emergency execution upon warrant.
15-1-708. Release of lien.
15-1-709. Remedy not exclusive.

Part 8 — Payment of Taxes By Electronic Funds Transfer

15-1-801. Definitions.
15-1-802. Taxes to be paid by electronic funds transfer — limitation.
15-1-803. Rules.

Part 9 reserved

Part 10 — Homeowner Property Tax Payment (Terminated. Sec. 15, Ch. 574, L. 1995)

Chapter Cross-References

Revenue and finance, Art. VIII, Mont. Const.
Legislative Fiscal Analyst to estimate revenue from existing and proposed taxes, 5-12-302.
Revenue and Transportation Interim Committee, Title 5, ch. 18.
Taxation of alcoholic beverages, Title 16, ch. 1, part 4.
Taxation of tobacco products, Title 16, ch. 11.
Revenue anticipation notes, Title 17, ch. 1, part 2.
Tax on gross receipts from parimutuel betting, 23-4-304.
Towns and cities may tax auctioneers, 30-11-516.
Insurance premium tax, 33-2-705.
Taxation of business trusts, 35-5-205.
Fire insurance premium tax, 50-3-109.
Federal tax liens, Title 71, ch. 3, part 2.
Inheritance and estate taxes, Title 72, ch. 16.
Department of Commerce to gather information for purposes of making long-range plans on factors influencing economic enterprises, including taxes, 90-1-102.

Part 1
General Provisions

15-1-101. *(Temporary)* **Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and the profit margin shown in national appraisal guides and manuals or the valuation schedules of the department.

(d) (i) The term "commercial", when used to describe property, means property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except property described in subsection (1)(d)(ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes and manufactured homes used exclusively as a residence except when held by a distributor or dealer as stock in trade;

(E) all property described in 15-6-135; and

(F) all property described in 15-6-136.

(e) The term "comparable property" means property that:

(i) has similar use, function, and utility;

(ii) is influenced by the same set of economic trends and physical, governmental, and social factors; and

(iii) has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) (i) "Department", except as provided in subsection (1)(g)(ii), means the department of revenue provided for in 2-15-1301.

(ii) In chapters 70 and 71, department means the department of transportation provided for in 2-15-2501.

(h) The terms "gas" and "natural gas" are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

(i) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department determines that the permanency of location of a mobile home, manufactured home, or housetrailer has been established, the mobile home, manufactured home, or housetrailer is presumed to be an improvement to real property. A mobile home, manufactured home, or housetrailer may be determined to be permanently located only when it is attached to a foundation that cannot feasibly be relocated and only when the wheels are removed.

(j) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification, and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold improvements are a lien only on the leasehold improvements.

(k) The term "livestock" means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rheas, emus, and domestic ungulates.

(l) The term "manufactured home" means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards. A manufactured home does not include a mobile home, as defined in 61-1-501 and in subsection (1)(m) of this section, a housetrailer, as defined in 61-1-501, or a mobile home or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976.

(m) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence.

(n) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements" and "intangible personal property" as that term is defined in 15-6-218.

(o) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(p) The term "property" includes money, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition may not be construed to authorize the taxation of the stocks of a company or corporation when the property of the company or corporation represented by the stocks is within the state and has been taxed.

(q) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8;

(iii) all timber belonging to individuals or corporations growing or being on the lands of the United States; and

(iv) all rights and privileges appertaining to mines, minerals, quarries, and timber.

(r) "Recreational" means hunting, fishing, swimming, boating, waterskiing, camping, biking, hiking, and winter sports, including but not limited to skiing, skating, and snowmobiling.

(s) "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(t) The term "stock in trade" means any mobile home, manufactured home, or housetrailer that is listed by the dealer as inventory and that is offered for sale, is unoccupied, and is not located on a permanent foundation. Inventory does not have to be located at the business location of a dealer or a distributor.

(u) The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" includes a county, city, incorporated town, township, school district, irrigation district, or drainage district or a person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification means the state tax appeal board.

15-1-101. *(Effective January 1, 2003)* **Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

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(n) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements" and "intangible personal property" as that term is defined in 15-6-218.

(o) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(p) The term "property" includes money, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition may not be construed to authorize the taxation of the stocks of a company or corporation when the property of the company or corporation represented by the stocks is within the state and has been taxed.

(q) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8;

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(t) The term "stock in trade" means any mobile home, manufactured home, or housetrailer that is listed by the dealer as inventory and that is offered for sale, is unoccupied, and is not located on a permanent foundation. Inventory does not have to be located at the business location of a dealer or a distributor.

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(2) The phrase "municipal corporation" or "municipality" or "taxing unit" includes a county, city, incorporated town, township, school district, irrigation district, or drainage district or a person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification means the state tax appeal board.

History: **(1)En. Sec. 4, p. 74, L. 1891; re-en. Sec. 3680, Pol. C. 1895; re-en. Sec. 2501, Rev. C. 1907; re-en. Sec. 1996, R.C.M. 1921; Cal. Pol. C. Sec. 3617; re-en. Sec. 1996, R.C.M. 1935; amd. Sec. 1, Ch. 99, L. 1939; amd. Sec. 1, Ch. 296, L. 1967; amd. Sec. 1, Ch. 450, L. 1975; amd. Sec. 1, Ch. 498, L. 1977; amd. Sec. 48, Ch. 566, L. 1977; Sec. 84-101, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 3, L. 1923; re-en. Sec. 2122.4, R.C.M. 1935; amd. Sec. 48, Ch. 405, L. 1973; amd. Sec. 3, Ch. 52, L. 1977; Sec. 84-704, R.C.M. 1947; R.C.M. 1947, 84-101, 84-704; amd. Sec. 1, Ch. 39, L. 1979; amd. Sec. 14, Ch. 693, L. 1979; amd. Sec. 1, Ch. 578, L. 1981; amd. Sec. 2, Ch. 488, L. 1983; amd. Sec. 1, Ch. 632, L. 1983; amd. Sec. 1, Ch. 20, L. 1985; amd. Sec. 1, Ch. 570, L. 1985; amd. Sec. 1, Ch. 743, L. 1985; amd. Sec. 35, Ch. 370, L. 1987; amd. Sec. 1, Ch. 613, L. 1987; amd. Sec. 2, Ch. 659, L. 1987; amd. Sec. 1, Ch. 10, Sp. L. June 1989; amd. Sec. 169, Ch. 411, L. 1991; amd. Sec. 6, Ch. 680, L. 1991; amd. Sec. 1, Ch. 705, L. 1991; amd. Sec. 8, Ch. 783, L. 1991; amd. Sec. 4, Ch. 379, L. 1993; amd. Sec. 1, Ch. 417, L. 1993; amd. Sec. 32, Ch. 27, Sp. L. November 1993; amd. Sec. 1, Ch. 206, L. 1995; amd. Sec. 1, Ch. 561, L. 1995; amd. Sec. 1, Ch. 49, L. 1997; amd. Sec. 6, Ch. 200, L. 1997; amd. Sec. 10, Ch. 285, L. 1999; amd. Sec. 2, Ch. 583, L. 1999.**

Cross-References

Assessment of credits, 15-8-201.

Definition of School district includes community college districts, 20-15-403.

15-1-102. Person defined. As used in this title (except chapters 30 and 31), unless the context indicates otherwise, the term "person" means an individual, corporation (domestic or foreign), partnership, association, joint-stock company, or syndicate.

History: **En. 84-102 by Sec. 1, Ch. 52, L. 1977; R.C.M. 1947, 84-102.**

15-1-103. Destruction of tax records authorized — procedure. (1) Notwithstanding the provisions of any other chapter of this code, the department of revenue is authorized to destroy tax records more than 3 years old as shall be determined to be of no further value.

(2) Authorization for destruction of tax records shall be by the director of revenue or authorized employees of the department. A copy of the authorization and authenticated list shall be maintained by the department.

History: **En. Sec. 1, Ch. 187, L. 1963; amd. Sec. 1, Ch. 9, L. 1969; amd. Sec. 61, Ch. 405, L. 1973; R.C.M. 1947, 84-724.**

15-1-104. Treasurers to destroy certain tax records. The treasurer of each county, city, or town in the state of Montana may destroy all tax records in his possession more than 30 years old.

History: **En. 84-4175.2 by Sec. 2, Ch. 286, L. 1975; R.C.M. 1947, 84-4175.2.**

15-1-105. Repealed. Sec. 1, Ch. 151, L. 1995.

History: **En. Sec. 198, p. 127, L. 1891; re-en. Sec. 4015, Pol. C. 1895; re-en. Sec. 2733, Rev. C. 1907; re-en. Sec. 2062, R.C.M. 1921; re-en. Sec. 2062, R.C.M. 1935; amd. Sec. 35, Ch. 405, L. 1973; R.C.M. 1947, 84-515; amd. Sec. 1, Ch. 581, L. 1979; amd. Sec. 2, Ch. 225, L. 1983; amd. Sec. 9, Ch. 557, L. 1987.**

15-1-106 through 15-1-110 reserved.

15-1-111. *(Temporary)* **Reimbursement to local governments and schools — duties of department and county treasurer — statutory appropriation.** (1) Prior to September 1, 1990, the department's agent in the county shall supply the following information to the department for each taxing jurisdiction within the county:

(a) the number of mills levied in the jurisdiction for tax year 1989;

(b) the number of mills levied in the jurisdiction for tax year 1990;

(c) the total taxable valuation for tax years 1989 and 1990, reported separately for each year, of all personal property not secured by real property; and

(d) the total taxable valuation for tax years 1989 and 1990, reported separately for each year, of all personal property secured by real property.

(2) After receipt of the information from its agent, the department shall calculate the amount of revenue lost to each taxing jurisdiction, using current year mill levies, due to the annual reduction in personal property tax rates set forth in 15-6-138, prior to 1994, and any reduction in taxes based upon recalculation of the effective tax rate for property in 15-6-145, prior to 1994. The department shall total the amounts for all taxing jurisdictions within the county.

(3) (a) The department shall remit to the county treasurer 50% of the amount of revenue reimbursable, determined pursuant to subsection (1), on or before November 30 and the remaining 50% on or before May 31.

(b) For tax year 1993 through tax year 1998, the department shall remit to the county treasurer of each county the same amount remitted to the county treasurer for the fiscal year 1991, as adjusted by the result of dissolved or combined taxing jurisdictions, as provided for in subsection (7). Fifty percent of the amount must be remitted on or before November 30 and the remaining 50% on or before May 31.

(c) (i) For tax year 1999 through tax year 2008, the department shall remit to the county treasurer of each county the same amount remitted to the county treasurer for the fiscal year 1991, progressively reduced by 10% of the 1991 amount each year, in accordance with the following schedule:

Tax Year	Percentage of 1991 Remittance Amount
1999	90
2000	80
2001	70
2002	60
2003	50
2004	40
2005	30
2006	20
2007	10
2008 and following years	0

(ii) The amount remitted must be adjusted by the result of dissolved or combined taxing jurisdictions, as provided for in subsection (7). Fifty percent of the amount must be remitted on or before November 30 and the remaining 50% on or before May 31.

(4) Upon receipt of the reimbursement from the department, the county treasurer shall distribute the reimbursement to each taxing jurisdiction as calculated by the department.

(5) For the purposes of this section and subject to subsection (7), "taxing jurisdiction" means a jurisdiction levying mills against personal property and includes but is not limited to a county, city, school district, tax increment financing district, and miscellaneous taxing district and the state of Montana.

(6) The amounts necessary for the administration of this section are statutorily appropriated, as provided in 17-7-502, from the general fund to reimburse eligible taxing jurisdictions for reductions in tax rates on personal property.

(7) The following apply to taxing jurisdictions that were altered after tax year 1989:

(a) A taxing jurisdiction that existed in tax year 1989 and that no longer exists is not entitled to reimbursement under this section.

(b) A taxing jurisdiction that existed in tax year 1989 and that is split into two or more taxing jurisdictions or that is annexed to or is consolidated with another taxing jurisdiction is entitled to reimbursement based on the portion of 1989 taxable value within each new taxing jurisdiction. The department shall determine the portion of 1989 taxable value located in each taxing jurisdiction.

(c) A taxing jurisdiction that did not exist in tax year 1989 is not entitled to reimbursement under this section unless the jurisdiction was created as described in subsection (7)(b). *(Repealed effective July 1, 2008—secs. 66(2), 68(2), Ch. 422, L. 1997.)*

History: En. Sec. 9, Ch. 10, Sp. L. June 1989; amd. Sec. 2, Ch. 773, L. 1991; amd. Sec. 1, Ch. 499, L. 1993; amd. Sec. 33, Ch. 27, Sp. L. November 1993; amd. Sec. 9, Ch. 570, L. 1995.

15-1-112. Business equipment tax rate reduction reimbursement to local government taxing jurisdictions. (1) On or before January 1, 1996, for the reduction in payment under subsection (4) and by June 1 of 1996, 1997, and 1998 for all other reimbursements in this section, the department of revenue shall determine a reimbursement amount associated with reducing the tax rate in 15-6-138 and provide that information to each county treasurer. The reimbursement amount must be determined for each local government taxing jurisdiction that levied mills on the taxable value of property described in 15-6-138 in the corresponding tax year. However, the reimbursement does not apply to property described in 15-6-138 that has a reduced tax rate under 15-24-1402.

(2) (a) The reimbursement amount to be used as the basis for the payment reduction under subsection (4) is the product of multiplying the tax year 1995 taxable value of property described in 15-6-138 for each local government taxing jurisdiction by the tax year 1995 mill levy for the jurisdiction and then multiplying by 1/9th.

(b) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1996 is the amount determined under subsection (2)(a) unless the tax year 1996 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1996 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1996 is the result of subtracting the simulated 1996 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1996 tax for the particular jurisdiction is the actual tax year 1996 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1996 tax is greater than the 1995 tax, the reimbursement amount is zero.

(c) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1997 is the amount determined under subsection (2)(a) multiplied by two unless the tax year 1997 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1997 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1997 is the result of subtracting the simulated 1997 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1997 tax for the particular jurisdiction is the actual tax year 1997 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1997 tax is greater than the 1995 tax, the reimbursement amount is zero.

(d) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1998 is the amount determined under subsection (2)(a) multiplied by three unless the tax year 1998 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1998 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1998 is the result of subtracting the simulated 1998 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1998 tax for the particular jurisdiction is the actual tax year 1998 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1998 tax is greater than the 1995 tax, the reimbursement amount is zero.

(3) (a) For purposes of this section, "local government taxing jurisdiction" means a local government rather than a state taxing jurisdiction that levied mills against property described in 15-6-138, including county governments, incorporated city and town governments, consolidated county and city governments, tax increment financing districts, local elementary and high school districts, local community college districts, miscellaneous districts, and special districts. The term includes countywide mills levied for equalization of school retirement or transportation.

(b) The term does not include county or state school equalization levies provided for in 20-9-331, 20-9-333, and 20-9-360.

(c) Each tax increment financing district must receive the benefit of the state mill on the incremental taxable value of the district.

(4) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1996 by an amount equal to 38% of the reimbursement amount determined under subsection (2)(a) for all of the local government taxing jurisdictions in the county.

(5) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1996 by an amount equal to 31% of the reimbursement amount for tax year 1996 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(6) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1997 by an amount equal to 31% of the reimbursement amount for tax year 1996 for all of the local government taxing jurisdictions in the county and by an amount equal to 38% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(7) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1997 by an amount equal to 31% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(8) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1998 by an amount equal to 31% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county and by an amount equal to 38% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(9) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1998 by an amount equal to 31% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(10) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1999 by an amount equal to 69% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(11) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of the years 1999 through 2007 by an amount equal to 31% of the reimbursement amount determined in subsection (13) for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(12) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of the years 2000 through 2008 by an amount equal to 69% of the reimbursement amount determined in subsection (13) for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(13) (a) The reimbursement amount for tax year 1999 and each subsequent tax year for 9 years must be progressively reduced each year by 10% of the reimbursement amount for tax year 1998, according to the following schedule:

Tax Year	Percentage of 1998 Reimbursement Amount
1999	90
2000	80
2001	70
2002	60
2003	50
2004	40
2005	30
2006	20
2007	10
2008 and following years	0

(b) The reimbursement amount for each tax year must be the basis for reducing the amount remitted to the state for the levy imposed under 20-9-360 in December of the same year and June of the following year.

(14) The county treasurer shall use the funds from the reduced payment to the state for the levy imposed under 20-9-360 to reimburse each local government taxing jurisdiction in the amount determined by the department under subsection (2). The reimbursement must be distributed to funds within local government taxing jurisdictions in the same manner as taxes on property described in 15-6-138 are distributed. The reimbursement in June must be distributed based on the prior year's mill levy, and the reimbursement in December must be based on the current year's mill levy.

(15) Each local government taxing jurisdiction receiving reimbursements shall consider the amount of reimbursement that will be received and lower the mill levy otherwise necessary to fund the budget by the amount that would otherwise have to be raised by the mill levy.

(16) A local government taxing jurisdiction that ceases to exist after October 1, 1995, will no longer be considered for revenue loss or reimbursement purposes. A local government taxing jurisdiction that is created after January 1, 1996, will not be considered for revenue loss or reimbursement purposes. If a local government taxing jurisdiction that existed prior to January of 1996 is split between two or more taxing jurisdictions or is annexed to or is consolidated with another taxing jurisdiction, the department shall determine how much of the revenue loss and reimbursement is attributed to the new jurisdictions.

History: En. Sec. 2, Ch. 570, L. 1995; amd. Sec. 25, Ch. 51, L. 1999; amd. Sec. 1, Ch. 245, L. 1999; amd. Sec. 6, Ch. 571, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 571 in (3)(b) deleted former second sentence that read: "It also does not include any state levy for welfare programs provided for in 53-2-813." Amendment effective July 1, 2001.

15-1-113. *(Effective January 1, 2002)* **Reimbursement payment.** (1) The department shall determine the amount of fee in lieu of property tax lost by each local government as a result of the amendments to 61-3-529 contained in sections 2 through 4, Chapter 500, Laws of 2001. The department shall use calendar year 2002 as its base year for each determination.

(2) (a) The department shall determine the amount of revenue due each local government for calendar year 2002 from the fee in lieu of property tax imposed in 61-3-529.

(b) The department shall then calculate for each local government for calendar year 2002 the amount of revenue that would have been due from the fee in lieu of tax imposed in section 2, Chapter 500, Laws of 2001, if section 2, Chapter 500, Laws of 2001, had been in effect for calendar year 2002.

(3) (a) For fiscal year 2003, the amount of reimbursement is equal to one-half the difference between the amounts calculated under subsection (2).

(b) For fiscal year 2004, the reimbursement is three times the amount calculated in subsection (3)(a).

(c) For fiscal year 2005, the reimbursement is five times the amount calculated in subsection (3)(a).

(d) For fiscal year 2006 and for each succeeding fiscal year, the reimbursement is six times the amount calculated in subsection (3)(a).

(4) The department shall distribute the reimbursement payments to local governments on the following quarterly schedule:

(a) For fiscal 2003, the quarterly payments will be paid on or before March 31, 2003, and June 30, 2003.

(b) For fiscal 2004, and each succeeding fiscal year, the quarterly payments will be paid on or before September 30, December 31, March 31, and June 30 of each year.

(5) As used in this section, "local government" means a county, consolidated local government, incorporated city, incorporated town, or school district.

(6) The local government reimbursements calculated in this section are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments.

History: En. Sec. 5, Ch. 500, L. 2001.

Compiler's Comments

Effective Date: Section 8(1), Ch. 500, L. 2001, provided that this section is effective January 1, 2002.

15-1-114 and 15-1-115 reserved.

15-1-116. Manufactured home considered as improvement to real property — requirements. (1) A manufactured home will be considered for tax purposes an improvement to real property if:

(a) the running gear is removed; and

(b) the manufactured home is attached to a permanent foundation on land that is owned or being purchased by the owner of the manufactured home or, if the land is owned by another person, with the permission of the landowner.

(2) To eliminate the certificate of ownership of a manufactured home, an owner may file a statement of intent on a form furnished by the department of justice.

(3) The statement of intent must include:

(a) the serial number of the manufactured home;

(b) the legal description of the real property to which the manufactured home has been permanently attached;

(c) a description of any security interests in the manufactured home; and

(d) approval from all lienholders of the intent to eliminate the title.

(4) The owner shall present the statement of intent to the county treasurer of the county in which the manufactured home is located and shall surrender the certificate of ownership. Upon receipt of a titling fee of $5, the county treasurer shall issue the owner a duplicate receipt for the surrendered certificate and forward a copy of the statement of intent, the original receipt, and the surrendered certificate to the department of justice. The county treasurer may not issue the receipt unless all taxes, interest, and penalties on the manufactured home have been paid in full. The county treasurer shall:

(a) deposit $1.50 of the titling fee in the county general fund; and

(b) remit $3.50 of the titling fee to the department for deposit in the state general fund.

(5) Upon the recording of the statement of intent and the receipt of surrender, the manufactured home may not be physically removed without the consent of all persons who have an interest in the manufactured home.

(6) A manufactured home that has been declared an improvement to real property in accordance with this section must be treated by the department and by lending institutions in the same manner as any other residence that is classified as an improvement.

History: En. Sec. 2, Ch. 200, L. 1997; amd. Sec. 5, Ch. 257, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 257 in (4)(b) substituted reference to department (of revenue) for reference to state treasurer. Amendment effective July 1, 2001.

Applicability: Section 49, Ch 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

15-1-117. Reversal of declaration — exception. (1) Before a manufactured home can be physically removed from its location, the owner shall obtain a search of the title to the land from a title insurance company in order to identify those persons or entities whose consent for removal must be obtained. The owner shall obtain permission in writing from the affected persons or entities before removing the manufactured home from its location.

(2) At least 30 days before the manufactured home is removed, the owner shall give written notice to the department and the county treasurer in which the home is currently located, of the intended removal of the home. The written notice must include the written consents of the affected persons or entities identified in subsection (1). The owner may not remove the home until the written consents are received and all of the taxes that have been assessed have been paid in full to the county treasurer.

(3) Within 5 days of the removal of the home, the purchaser shall make a declaration of reversal and apply for a certificate of ownership for the manufactured home from the department of justice in accordance with the provisions of Title 61, chapter 3, part 2.

History: En. Sec. 3, Ch. 200, L. 1997.

15-1-118 and 15-1-119 reserved.

15-1-120. Policy and purpose. (1) The purpose of Chapter 574, Laws of 2001, is to establish a financial partnership between state and local governments.

(2) This partnership is founded on trust and is committed to protecting and promoting the financial interests of cities, towns, counties, local schools, special districts, and state government.

(3) Local governments agree to relinquish dedicated revenue in exchange for an entitlement share of the state general fund based on a formula that responds to the performance of the Montana economy.

(4) The legislature agrees to fund the entitlement share in accordance with the provisions of 15-1-121.

History: En. Sec. 251, Ch. 574, L. 2001.

Compiler's Comments

Effective Date: Section 256(1), Ch. 574, L. 2001, provided that this section is effective July 1, 2001.

15-1-121. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection is each local government's base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle and boat taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-321;

(v) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001, and 61-3-537; and

(vi) Title 61, chapter 3, part 7;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-1-1103;

(iv) 25-9-506;

(v) 25-9-804; and

(vi) 27-9-103;

(e) certificate of ownership fees for manufactured homes pursuant to 15-1-116;

(f) financial institution taxes pursuant to Title 15, chapter 31, part 7;

(g) coal severance taxes allocated for county land planning pursuant to 15-35-108;

(h) all beer, liquor, and wine taxes pursuant to:

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

(i) late filing fees pursuant to 61-3-201;

(j) title and registration fees pursuant to 61-3-203;

(k) disabled veterans' flat license plate fees and purple heart license plate fees pursuant to 61-3-332;

(l) county personalized license plate fees pursuant to 61-3-406;

(m) special mobile equipment fees pursuant to 61-3-431;

(n) single movement permit fees pursuant to 61-4-310;

(o) state aeronautics fees pursuant to 67-3-101; and

(p) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool.

(3) (a) Beginning with fiscal year 2002 and in each succeeding fiscal year, the base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. For fiscal years 2002 and 2003, the growth rate is 3%. Beginning with calendar year 2004, by October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(i)(A).

(ii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(b) (i) For fiscal year 2004 and subsequent fiscal years, the entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(i)(B) and (3)(a)(ii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(i)(A) and (3)(a)(ii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis beginning September 15, 2001.

(b) (i) For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2003 and each succeeding fiscal year, the growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. The growth factor in the entitlement share must be calculated separately for:

(A) counties;

(B) consolidated local governments; and

(C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year. the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
Lewis and Clark	Helena - # 2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

(c) The entitlement share for industrial tax increment financing districts is as follows:

(i) for fiscal years 2002 and 2003:

Missoula	County Airport Industrial	$4,812
Silver Bow	Ramsay Industrial	597,594;

(ii) for fiscal years 2004 and 2005:

Missoula	County Airport Industrial	$2,406
Silver Bow	Ramsay Industrial	298,797; and

(iii) $0 for all succeeding fiscal years.

(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.

(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.

(9) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection (9)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

(10) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

(11) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(12) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

History: En. Sec. 1, Ch. 574, L. 2001.

Compiler's Comments

Effective Date: Section 256(1), Ch. 574, L. 2001, provided that this section is effective July 1, 2001.

15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, $36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

(a) $2,873,853 in fiscal year 2002;

(b) $2,916,961 in fiscal year 2003;

(c) $2,960,715 in fiscal year 2004; and

(d) in each succeeding fiscal year, the amount in subsection (2)(c), increased by 1.5% in each succeeding fiscal year.

(3) For fiscal year 2002 and for each succeeding fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) $2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) $1 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to Title 61, chapter 3, part 3. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532;

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) $1 for each off-highway vehicle subject to payment of the fee in lieu of tax, as provided for in 23-2-803; and

(ii) $1.50 for each light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicles weighing more than 1 ton, motorcycle, quadricycle, and motor home subject to registration or reregistration pursuant to 61-3-321;

(c) to the department of fish, wildlife, and parks:

(i) $2.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) $5 for each snowmobile registered under 23-2-616, with $2.50 to be used for enforcing the purposes of 23-2-601 through 23-2-644 and $2.50 designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) $1 for each duplicate snowmobile decal issued under 23-2-617;

(iv) $5 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, $3.50 for each recreational vehicle, camper, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321 or 61-3-524; and

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) to the state veterans' cemetery account, provided for in 10-2-603, $10 for each veteran's license plate issued pursuant to 61-3-332(10)(a)(ii), (10)(f), and (10)(h); and

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement.

(f) 25 cents a year for each vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, $5,742,983 in lieu of the amount deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001.

(5) For each fiscal year, beginning with fiscal year 2002, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000. Transfer amounts in each succeeding fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available.

(6) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes.

History: En. Sec. 3, Ch. 574, L. 2001.

Compiler's Comments

Coordination Instruction Not Implemented: Section 5(1), Ch. 95, L. 2001, a coordination section, provided that if House Bill No. 124 was passed and approved and if it included a revision of county funding of the motorboat account, then the allocation to the department of fish, wildlife, and parks in [section 3(4)] [15-1-122] of House Bill No. 124 was to be increased by $337,500. House Bill No. 124 was passed and approved as Chapter 574, L. 2001. The coordination instruction in Ch. 95, L. 2001, was written to reflect a prior version of House Bill No. 124 in which agencies received lump-sum allocations to replace lost funding. The version of House Bill No. 124 that was passed and approved allocates a specific dollar amount to the motorboat account for each boat registered or receiving a decal. Therefore, the coordination provision in Ch. 95, L. 2001, has not been implemented because it no longer reflects the content of Ch. 574, L. 2001.

Effective Date: Section 256(1), Ch. 574, L. 2001, provided that this section is effective July 1, 2001.

Part 2
Department of Revenue

Part Cross-References

Property tax administration, Art. VIII, sec. 3, Mont. Const.

Equal valuation, Art. VIII, sec. 4, Mont. Const.

Director of Department of Revenue to prepare revenue estimates and continuously study fiscal problems and tax structures, 2-7-104.

Duty of public officials to supply revenue information on request, 2-7-105.

Creation of Department of Revenue — head, 2-15-1301.

Director of Department of Revenue, 2-15-1302.

Legislative oversight of Department of Revenue, 5-18-107.

Officers of municipal corporations jointly and severally liable for losses suffered through delinquency in providing information, 15-1-301.

Duties of Department — classification and appraisal of property, Title 15, ch. 7, part 1; Title 15, ch. 8.

Department authorized to request and collect federal money in lieu of taxes, Title 17, ch. 3, part 3.

Department as state debt collector, Title 17, ch. 4, part 1.

Department to approve condominium declaration, 70-23-304.

Department to compute taxes in determining state land equalization payment, 77-1-502.

15-1-201. Administration of revenue laws. (1) (a) The department has general supervision over the administration of the assessment and tax laws of the state, except Title 15, chapters 70 and 71, and over any officers of municipal corporations having any duties to perform under the laws of this state relating to taxation to the end that all assessments of property are made relatively just and equal, at true value, and in substantial compliance with law. The department may make rules to supervise the administration of all revenue laws of the state and assist in their enforcement.

(b) The department may contract with the U.S. department of the interior or any other federal agency to perform federal royalty audits, collection services, and any other delegable functions related to mining operations on federal lands within the state pursuant to the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

(c) The department shall adopt rules specifying which types of property within the several classes are considered comparable property as defined in 15-1-101.

(d) The department shall also adopt rules for determining the value-weighted mean sales assessment ratio for all commercial and industrial real property and improvements.

(2) The department shall confer with, advise, and direct officers of municipal corporations concerning their duties, with respect to taxation, under the laws of the state.

(3) The department shall collect annually from the proper officers of the municipal corporations information, in a form prescribed by the department, about the assessment of property, collection of taxes, receipts from licenses and other sources, expenditure of public funds for all purposes, and other information as may be necessary and helpful in the work of the department. It is the duty of all public officers to fill out properly and return promptly to the department all forms and to aid the department in its work. The department shall examine the records of all municipal corporations for purposes considered necessary or helpful.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(part); (1)(b), (1)(c)En. Sec. 10, Ch. 743, L. 1985; amd. Sec. 21, Ch. 10, L. 1993; amd. Sec. 34, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 561, L. 1995; amd. Sec. 1, Ch. 314, L. 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Department authorized to adopt rules relating to:
  payment of taxes by electronic funds transfer, 15-1-803;
  realty transfer certificates, 15-7-306;
  centrally assessed property, 15-23-108;
  taxation of mobile homes and housetrailers, 15-24-207;
  income tax, 15-30-305;
  new or expanded industry credit, 15-31-127;
  allocation of income for purposes of corporation license tax, 15-31-313;
  corporation income tax, 15-31-407;
  corporation license or income taxes, 15-31-501;
  energy-related tax incentives, 15-32-105, 15-32-203;
  coal severance tax, 15-35-122;
  public contractors' returns, 15-50-301;
  taxation of motor vehicles, 61-3-506.
List of corporations furnished by Secretary of State, 15-31-603.

15-1-202. Enforcement of revenue laws. (1) The department may direct proceedings, actions, and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities, and punishment of public officials and persons or their agents for failure or neglect to comply with the provisions of the statutes, except Title 15, chapter 70, governing the revenue of the state or municipal corporations. The department shall cause complaints to be made against public officers to the proper district court for their removal from office for official misconduct or neglect of duty.

(2) The department may require county attorneys to assist in the commencement and prosecution of actions and proceedings in their respective counties for penalties, forfeitures, removals, and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(6), (7); amd. Sec. 4, Ch. 623, L. 1989; amd. Sec. 22, Ch. 10, L. 1993; amd. Sec. 35, Ch. 27, Sp. L. November 1993.

Cross-References

Official misconduct, 45-7-401.

15-1-203. Study of other tax systems. The department may investigate the tax systems of other states and countries and formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation and improvement in the system of taxation and the economical expenditure of public revenue in the state.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(14).

15-1-204. Consultation with governor. The department shall consult and confer with the governor of the state upon the subject of taxation, the administration of the laws relating thereto, and the progress of the work of the department and furnish the governor such assistance as he may require.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(15).

15-1-205. Biennial report — contents. (1) The department shall transmit to the governor 20 days before the meeting of the legislature and make available to the legislature a report of the department showing all the taxable property of the state, counties, and cities and its value. The department shall follow the provisions of 5-11-210 in preparing the report.

(2) The report must also include the statewide average effective tax rate of taxable property in each class of property. The department may determine whether an appropriate effective tax rate may be derived for net proceeds, gross proceeds, agricultural land, and forest land.

(3) The report or supplements to the report may also include:

(a) the gross dollar amount of revenue loss attributable to:

(i) personal income and corporation license tax exemptions;

(ii) property tax exemptions for which application to the department is necessary;

(iii) deferral of income;

(iv) credits allowed against Montana personal income tax or Montana corporation license tax, reported separately;

(v) deductions from income; and

(vi) any other identifiable preferential treatment of income or property;

(b) any change in tax revenue of the state or any unit of local government attributable to a change in federal tax law; and

(c) any change in the revenue of any unit of local government attributable to a change in state tax law.

(4) The data described in subsection (3), if reported, must be related to the income and age of the taxpayer whenever the information is available.

(5) (a) When reporting the data described in subsection (3)(a), the department shall identify any known purpose of the preferential treatment.

(b) Based upon the purpose of the preferential treatment, the department shall outline the available data necessary to determine the effectiveness of the preferential treatment.

(6) In reporting the data described in subsection (3), the department shall report any comparable data, if available, from Wyoming, Idaho, North Dakota, and South Dakota and from any other state the department may choose.

(7) The department shall identify in a separate section of the report any changes that have been made or that are contemplated in property appraisal or assessment.

(8) The department may include a report, prepared by the department of transportation, showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(16); amd. Sec. 1, Ch. 584, L. 1979; amd. Sec. 1, Ch. 500, L. 1987; amd. Sec. 21, Ch. 112, L. 1991; amd. Sec. 23, Ch. 10, L. 1993; amd. Sec. 18, Ch. 349, L. 1993; amd. Sec. 36, Ch. 27, Sp. L. November 1993; amd. Sec. 1, Ch. 9, L. 1995; amd. Sec. 1, Ch. 61, L. 1997; amd. Sec. 1, Ch. 199, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 199 inserted (2) concerning statewide effective tax rate for each class of property; and made minor changes in style. Amendment effective October 1, 2001.

Cross-References

Basic gasoline license tax, Title 15, ch. 70, part 2.

15-1-206. Waiver of penalties — interest. (1) The department may, in its discretion, waive, for reasonable cause, any penalty assessed by the department.

(2) Whenever the department waives a penalty provided for in this title, it also may, in its discretion, waive interest not to exceed $100 due upon the tax.

(3) Whenever the department is notified of a change in federal taxable income upon filing an amended Montana return, as provided for in 15-30-304, the department shall waive the interest on the additional tax liability from the date the department is notified until the department sends the statement of increased tax liability to the taxpayer.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(17); amd. Sec. 1, Ch. 477, L. 1981; amd. Sec. 1, Ch. 68, L. 1999; amd. Sec. 3, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-1-207. Writeoff of collection of tax, penalty, or interest — rules. (1) The department of revenue may write off the collection of any tax, penalty, or interest due to the state under this title when the department determines that it is not cost-effective for the department to attempt to collect the tax, penalty, or interest. The department shall establish procedures to determine the cost-effectiveness of collecting the tax, penalty, or interest. If the department writes off the collection of any tax, penalty, or interest, the department shall place in the taxpayer's file a written justification for the writeoff that includes a determination that attempted collection is not cost-effective.

(2) The department shall prescribe rules to establish the procedures to carry out the purposes of this section.

History: En. Sec. 1, Ch. 84, L. 1991.

15-1-208. Signature alternatives for electronically filed returns. For purposes of Title 15, chapters 1, 2, 6 through 10, 15 through 18, 23, 24, 30 through 33, 35 through 38, 44, 50, 51, 53, 59 through 61, and 65, and Title 16, chapter 11, the director of revenue, and for the purposes of Title 15, chapter 70, the director of the department of transportation, may prescribe, by rule, methods for signing, subscribing, or verifying electronically filed tax returns. Returns electronically filed in accordance with the methods adopted by rule have the same validity and consequences as physical forms signed by a taxpayer.

History: En. Sec. 2, Ch. 572, L. 1995; amd. Sec. 1, Ch. 6, L. 1997; Sec. 15-30-211, MCA 1995; redes. 15-1-208 by Sec. 2, Ch. 6, L. 1997.

15-1-209 and 15-1-210 reserved.

15-1-211. Uniform dispute review procedure — notice — appeal. (1) The department shall provide a uniform review procedure for all persons or other entities, except as provided in subsection (1)(a).

(a) The department's dispute review procedure must be adopted by administrative rule and applies to all matters administered by the department and to all issues arising from the administration of the department, except estate taxes, property taxes, and the issue of whether an employer-employee relationship existed between the person or other entity and individuals subjecting the person or other entity to the requirements of chapter 30, part 2, or whether the employment relationship was that of an independent contractor. The procedure applies to assessments of centrally assessed property taxed pursuant to chapter 23.

(b) (i) The term "other entity", as used in this section, includes all businesses, corporations, and similar enterprises.

(ii) The term "person" as used in this section includes all individuals.

(2) (a) Persons or other entities having a dispute with the department have the right to have the dispute resolved by appropriate means, including consideration of alternative dispute resolution procedures such as mediation.

(b) The department shall establish a dispute resolution office to resolve disputes between the department and persons or other entities.

(c) Disputes must be resolved by a final department decision within 180 days of the referral to the dispute resolution office, unless extended by mutual consent of the parties. If a final department decision is not issued within the required time period, the remedy is an appeal to the appropriate forum as provided by law.

(3) (a) The department shall provide written notice to a person or other entity advising them of a dispute over matters administered by the department.

(b) The person or other entity shall have the opportunity to resolve the dispute with the department employee who is responsible for the notice, as indicated on the notice.

(c) If the dispute cannot be resolved, either the department or the other party may refer the dispute to the dispute resolution office.

(d) The notice must advise the person or other entity of their opportunity to resolve the dispute with the person responsible for the notice and their right to refer the dispute to the dispute resolution office.

(4) Written notice must be sent to the persons or other entities involved in a dispute with the department indicating that the matter has been referred to the dispute resolution office. The written notice must include:

(a) a summary of the department's position regarding the dispute;

(b) an explanation of the right to the resolution of the dispute with a clear description of all procedures and options available;

(c) the right to obtain a final department decision within 180 days of the date that the dispute was referred to the dispute resolution office;

(d) the right to appeal should the department fail to meet the required deadline for issuing a final department decision; and

(e) the right to have the department consider alternative dispute resolution methods, including mediation.

(5) The department shall:

(a) develop guidelines that must be followed by employees of the department in dispute resolution matters;

(b) develop policies concerning the authority of an employee to resolve disputes; and

(c) establish procedures for reviewing and approving disputes resolved by an employee or the dispute resolution office.

(6) (a) (i) The director of revenue or the director's designee is authorized to enter into an agreement with a person or other entity relating to a matter administered by the department.

(ii) The director or the director's designee has no authority to bind a future legislature through the terms of an agreement.

(b) Subject to subsection (6)(a)(ii), an agreement under the provisions of subsection (6)(a)(i) is final and conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(i) the agreement may not be reopened as to matters agreed upon or be modified by any officer, employee, or agent of this state; and

(ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded.

History: En. Sec. 1, Ch. 811, L. 1991; amd. Sec. 2, Ch. 529, L. 1995; amd. Sec. 1, Ch. 123, L. 1997; amd. Sec. 1, Ch. 36, L. 1999; amd. Sec. 2, Ch. 451, L. 1999; amd. Sec. 4, Ch. 9, Sp. L. May 2000.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 in (1)(a) near middle of first sentence before "estate taxes" deleted "inheritance taxes"; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

15-1-212 through 15-1-215 reserved.

15-1-216. Uniform penalty and interest assessments for violation of tax provisions — applicability — exceptions. (1) (a) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of $50 or the amount of the tax due, whichever is less.

(b) A person who purposely fails to file a required return, statement, or other report must be assessed an additional late filing penalty of $200 or the amount of the tax due, whichever is less.

(c) A person who fails to pay a tax when due must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 18% of the tax due.

(d) A person who purposely fails to pay a tax when due must be assessed an additional penalty equal to 25% of the tax due or $200, whichever is less, plus interest as provided in subsection (2).

(2) Interest on taxes not paid when due must be assessed at the rate of 12% a year, accrued at 1% a month or fraction of a month, on the unpaid tax. Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid.

(3) (a) Except as provided in subsection (3)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16.

(b) This section does not apply to:

(i) property taxes;

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70; or

(iii) taxes, fees, and other assessments subject to other penalty or interest charges as provided by law.

History: En. Sec. 1, Ch. 427, L. 1999.

15-1-217. Rulemaking authority. The department shall adopt rules that are necessary to implement and administer 15-1-216.

History: En. Sec. 2, Ch. 427, L. 1999.

15-1-218 through 15-1-220 reserved.

15-1-221. Short title. Sections 15-1-221 through 15-1-223 may be cited as the "Montana Taxpayer Bill of Rights".

History: En. Sec. 1, Ch. 619, L. 1991.

15-1-222. Taxpayer bill of rights. The department of revenue shall in the course of performing its duties in the administration and collection of the state's taxes ensure that:

(1) the taxpayer has the right to record any interview, meeting, or conference with auditors or any other representatives of the department;

(2) the taxpayer has the right to hire a representative of the taxpayer's choice to represent the taxpayer's interests before the department or any tax appeal board. The taxpayer has a right to obtain a representative at any time, except that the selection of a representative may not be used to unreasonably delay a field audit that is in progress. The representative must have written authorization from the taxpayer to receive from the department confidential information concerning the taxpayer. The department shall provide copies to the authorized representative of all information sent to the taxpayer and shall notify the authorized representative concerning contacts with the taxpayer.

(3) the taxpayer has the right to obtain tax advice from the department. The taxpayer has a right to the waiver of penalties and interest, but not taxes, when he has relied on written advice provided to him by an employee of the department.

(4) at the discretion of the department, the taxpayer has the right to pay delinquent taxes, interest, and penalties on an installment basis. This subsection applies only to taxes collected by the department, provided the taxpayer meets reasonable criteria.

(5) the taxpayer has the right to a complete and accurate written description of the basis for any additional tax assessed by the department;

(6) the taxpayer has the right to a review by management level employees of the department for any additional taxes assessed by the department;

(7) the taxpayer has the right to a full explanation of the available procedures for review and appeal of additional tax assessments;

(8) the taxpayer, after the exhaustion of all appropriate administrative remedies, has the right to have the state tax appeal board or a court, or both, review any final decision of the department assessing an additional tax. The taxpayer shall seek a review in a timely manner. A taxpayer is entitled to collect court costs and attorney fees from the department for frivolous or bad faith lawsuits as provided in 25-10-711.

(9) the taxpayer has the right to a full explanation of the department's authority to collect delinquent taxes, including the procedures and notices that are required to protect the taxpayer;

(10) the taxpayer has the right to have certain property exempt from levy and seizure as provided in Title 25, chapter 13, part 6, and any other applicable provisions in Montana law;

(11) the taxpayer has the right to the immediate release of any lien the department has placed on property when the tax is paid or when the lien is the result of an error by the department;

(12) the taxpayer has the right to assistance from the department in complying with state and local tax laws that the department administers; and

(13) the taxpayer has the right to be guaranteed that an employee of the department is not paid, promoted, or in any way rewarded on the basis of assessments or collections from taxpayers.

History: **En. Sec. 2, Ch. 619, L. 1991.**

15-1-223. Office of taxpayer assistance. (1) The department of revenue shall establish and maintain an office of taxpayer assistance.

(2) The office shall assist taxpayers by:

(a) providing easily understandable tax information on audits and corrections and review procedures of the department;

(b) providing easily understandable information on appeal procedures;

(c) answering questions regarding preparing and filing returns and reports with the department; and

(d) locating documents or payments filed with or submitted to the department.

(3) The office of taxpayer assistance shall also:

(a) receive and evaluate complaints related to improper or abusive behavior or inefficient service provided by employees of the department and recommend appropriate action to the director of the department of revenue to resolve the complaints;

(b) compile data on the number and type of taxpayer complaints received and evaluate the actions taken to resolve complaints;

(c) survey taxpayers to obtain their evaluation of the quality of service provided by the department;

(d) monitor the department's compliance with the taxpayer bill of rights and report any abuses to the director of the department;

(e) monitor the department's collection activities to:

(i) report any abuses in collection activities by the department to the director;

(ii) recommend to the director whether a particular collection activity should be stopped if the taxpayer has not had an adequate opportunity to discuss alternative means of payment; and

(f) perform any other functions that the director may assign to assist taxpayers in complying with Montana's tax laws.

History: **En. Sec. 3, Ch. 619, L. 1991.**

15-1-224 through 15-1-229 reserved.

15-1-230. *(Temporary)* **Report on income tax credit to committee.** The department shall report to the revenue and transportation interim committee at least once each year the number and type of taxpayers claiming the credit under 15-30-166, the total amount of the credit claimed, and the department's cost associated with administering the credit. *(Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)*

History: **En. Sec. 6, Ch. 537, L. 1997; amd. Sec. 38, Ch. 19, L. 1999.**

Compiler's Comments

Extension of Termination Date: Section 5, Ch. 226, L. 2001, amended sec. 9, Ch. 537, L. 1997, by extending the termination date imposed by Ch. 537 to December 31, 2007.

15-1-231. Payment of individual income taxes by credit card and other commercially acceptable means. (1) The department may accept payment by credit card, debit card, or other commercially acceptable means from a person making a payment to the department of individual income taxes, including penalties, interest, and fees.

(2) (a) If the payment is made by credit card, debit card, charge card, or similar method, the tax liability is not discharged and the person has not paid the tax until the department receives payment or credit from the financial institution or credit card company responsible for making the payment or credit and the payment or credit is not subsequently charged back to the state by the financial institution or credit card company. Upon receipt of the payment or credit, the amount is considered paid on the date on which the charge was made by the taxpayer, unless the payment or credit is subsequently charged back to the state by the financial institution or credit card company.

(b) Upon notice of nonpayment, the department may charge the person who attempted the payment of the tax a fee not to exceed the costs of processing the claim for payment of the tax. The amount of the fee must be added to the tax due and is collected in the same manner as the tax due.

(3) The taxpayer shall pay all fees required by a financial institution or credit card company for a payment made pursuant to this section.

History: En. Sec. 1, Ch. 50, L. 2001.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

Part 3
Investigation and Hearings

15-1-301. Investigations by department. (1) The department of revenue may examine all cases where evasion or violation of the laws for taxation of property, proceeds, occupation, or business is alleged, complained of, or discovered and ascertain wherein existing laws are ineffective or are improperly or negligently administered.

(2) (a) The department may inspect and examine or cause an inspection and examination of the records of the officers of any municipality whenever such officer has failed, neglected, or refused to return properly the information required by 15-1-201 within the time set by the department. Upon completion of such inspection and examination, the department shall transmit to the clerk or other proper official of the municipality a statement of the expenses incurred by the department to secure the necessary information. Within 60 days after the receipt by the municipality of the above statement, the same shall be audited as other claims of the municipal corporation are audited and shall be paid into the state treasury. If the statement is not paid, the attorney general shall institute an action in the proper court against the municipality to recover the same.

(b) The officers responsible for the furnishing of the information collected pursuant to 15-1-201 shall be jointly and severally liable for any loss the municipality may suffer through their delinquency. No payment may be made to them for salary or on any other account until the cost of such inspection and examination as provided above has been paid into the treasury or to the proper officers of such municipality. They shall also be subject to the other fines and penalties as prescribed by law.

(3) The department may require persons to furnish information concerning their capital, funded or other debt, current assets and liabilities, cost and value of property, earnings, operating and other expenses, taxes, and all other facts which may enable the department to ascertain the value of the relative burdens borne by all kinds of property and occupations in the state.

(4) The department may summon witnesses to appear and give evidence and to produce records, books, papers, and documents relating to any matter which the department has authority to investigate and determine.

(5) In any matter which the department has authority to investigate and determine, it may cause the deposition of witnesses residing within or without the state or absent therefrom to be

taken upon notice to the interested party, if any, in like manner that depositions are taken in actions pending in the district court.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(9) thru (13).

Cross-References

Depositions and discovery, Rules 26 through 37, M.R.Civ.P. (see Title 25, ch. 20).

15-1-302. Witnesses — oaths, contempt, and fees. (1) Oaths to witnesses in any investigation by the department may be administered by the director of revenue or the director's agent.

(2) (a) If a witness fails to obey a summons to appear before the department or refuses to testify or answer any material question or to produce records, books, papers, or documents when required to do so, the department shall institute proceedings in the district court to compel obedience to a summons or order of the board or to punish the witness for neglect or refusal to obey the summons.

(b) As required by 15-30-209, the department, in addition to instituting proceedings to compel obedience to a summons or order shall, as a part of the proceedings, request the court to issue an order requiring the payment of all penalties assessed for the employer's failure to report.

(3) A person who testifies falsely in any material matter under consideration by the department is guilty of perjury and shall be punished accordingly.

(4) Witnesses attending an investigation by the department must receive the same compensation as witnesses in the district court. The compensation must be charged to the proper appropriation for the department.

History: En. Sec. 16, Ch. 3, L. 1923; re-en. Sec. 2122.16, R.C.M. 1935; amd. Sec. 59, Ch. 405, L. 1973; R.C.M. 1947, 84-716; amd. Sec. 8, Ch. 491, L. 1997.

Cross-References

Subpoena of person for failure to file report on centrally assessed property, 15-23-104.

Witness fees, Title 26, ch. 2, part 5.

15-1-303. Penalty for refusal to furnish information. (1) If a person refuses to allow inspection of any books or records when requested by the department or refuses or neglects to furnish any information called for by the department in the performance of its official duties relating to the assessment and taxation of property, the department shall make a determination and assessment of the property that in its judgment appears to be just and equitable and may add to the assessment an amount not to exceed 20% of the assessment as a penalty for the refusal or neglect. The department shall immediately notify the person assessed of its action, either by mail or by personal service of the notice.

(2) Upon receiving an assessment made pursuant to subsection (1), the taxpayer has the following remedies:

(a) Within 30 days after receipt of the assessment, the taxpayer may request an informal conference with the department. At the conference, the taxpayer may present evidence in mitigation or extenuation of the failure to supply the information requested by the department. Within 10 days after the conference, the department shall notify the taxpayer by mail whether the assessment will be modified. The department may modify the penalty if the taxpayer presents sufficient evidence in mitigation or extenuation of the failure to supply the information sought by the department and if it finds that the taxpayer did not willfully refuse to supply the information.

(b) If the taxpayer is aggrieved as a result of the informal conference, the taxpayer may appeal to the county tax appeal board within 30 days after receipt of the decision of the department. The county tax appeal board has the authority to modify the:

(i) assessment only if it finds that the assessment exceeds 100% of the value of the property specified in 15-8-111; and

(ii) penalty if the taxpayer presents by a preponderance of the evidence facts in mitigation or extenuation of the failure to supply the information that the department sought.

(c) If the county tax appeal board modifies a penalty pursuant to subsection (2)(b)(ii), it may not reduce the penalty to less than 20% of the assessment or, if the assessment is modified pursuant to subsection (2)(b)(i), to less than 20% of the modified assessment.

(3) Either party aggrieved as a result of the decision of the county tax appeal board may appeal to the state tax appeal board within 30 calendar days after receipt of the county tax appeal board's decision. When deciding an appeal brought under this subsection, the state tax appeal board shall follow the provisions of subsections (2)(b) and (2)(c).

(4) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial review pursuant to 15-2-303.

History: En. Sec. 14, Ch. 3, L. 1923; re-en. Sec. 2122.14, R.C.M. 1935; amd. Sec. 58, Ch. 405, L. 1973; R.C.M. 1947, 84-714; amd. Sec. 1, Ch. 357, L. 1985; amd. Sec. 1, Ch. 227, L. 1993; amd. Sec. 37, Ch. 27, Sp. L. November 1993; amd. Sec. 1, Ch. 35, L. 1997; amd. Sec. 1, Ch. 36, L. 1997.

Cross-References

Estimating value of centrally assessed property on failure to file report, 15-23-104.

Part 4

Protest Payments, Actions to Recover, and Alternative Remedies

Part Cross-References

Tax appeals, Art. VIII, sec. 7, Mont. Const.

Judgment to be against Treasurer in suit to recover taxes paid under protest when funds held by Treasurer, 15-8-115.

Refund of taxes illegally refunded — concurrent remedy, 15-16-602.

Costs allowed in action involving legality of any tax, 25-10-101, 25-10-102.

Justice's Court without jurisdiction to hear tax issues, 25-31-101.

15-1-401. Repealed. Sec. 7, Ch. 501, L. 1981.

History: En. Sec. 1, Ch. 188, L. 1921; re-en. Sec. 2409, R.C.M. 1921; re-en. Sec. 2409, R.C.M. 1935; amd. Sec. 1, Ch. 197, L. 1955; amd. Sec. 3, Ch. 126, L. 1963; R.C.M. 1947, 84-4501; amd. Sec. 2, Ch. 581, L. 1979; amd. Sec. 5, Ch. 463, L. 1981.

15-1-402. Payment of taxes under protest. (1) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested. The protested payment must:

(a) be made to the officer designated and authorized to collect it;

(b) specify the grounds of protest; and

(c) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(2) A person appealing a property tax or fee pursuant to chapter 2 or 15 shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) All property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified

investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(5) The governing board of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units.

(b) If the action is finally determined adversely to the department of revenue, a county, a municipality, or the treasurer of a county or a municipality, then the treasurer shall, upon receiving a certified copy of the final judgment in the action from the state tax appeal board or from the district or supreme court, as appropriate, if the final action of the state tax appeal board is appealed in the time prescribed, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee deposited in the protest fund, and not released pursuant to subsection (5), as the person holding the judgment is entitled to recover, together with interest from the date of payment under protest, at the greater of:

(i) the rate of interest generated from the pooled investment fund provided for in 17-6-203 for the applicable period; or

(ii) 6% a year.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

(d) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible.

(e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the greater of the rates referred to in subsections (6)(b)(i) and (6)(b)(ii) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus four percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction may satisfy the requirements of this section by use of funds from one or more of the following sources:

(a) imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

(8) If the department revises an assessment that results in a refund of taxes of $5 or less, a refund is not owed.

History: En. 4024, Pol. C. 1895; amd. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2742, Rev. C. 1907; amd. Sec. 1, Ch. 135, L. 1909; re-en. Sec. 2269, R.C.M. 1921; amd. Sec. 1, Ch. 142, L. 1925; re-en. Sec. 2269, R.C.M. 1935; amd. Sec. 1, Ch. 204, L. 1955; amd. Sec. 151, Ch. 516, L. 1973; amd. Sec. 1, Ch. 348, L. 1977; amd. Sec. 1, Ch. 394, L. 1977; R.C.M. 1947, 84-4502; amd. Sec. 1, Ch. 281, L. 1979; amd. Sec. 1, Ch. 680, L. 1979; amd. Sec. 6, Ch. 463, L. 1981; amd. Sec. 4, Ch. 501, L. 1981; amd. Sec. 1, Ch. 26, Sp. L. June 1986; amd. Sec. 1, Ch. 213, L. 1989; amd. Sec. 1, Ch. 594, L. 1993; amd. Sec. 1, Ch. 448, L. 1999; amd. Sec. 80, Ch. 584, L. 1999; amd. Sec. 92, Ch. 574, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 574 at beginning of (7)(a) deleted "subject to 15-10-420"; in (7)(b) after "general fund" deleted "except that amount generated by the all purpose mill levy"; at beginning of third full sentence of (7)(c) deleted "Subject to 15-10-420"; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Section applicable to taxes levied to meet bond obligations and expenses of county water/sewer districts, 7-13-2308.

Payment of assessment for forest protection under protest, 76-13-210.

15-1-403. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

History: En. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2743, Rev. C. 1907; amd. Sec. 2, Ch. 135, L. 1909; re-en. Sec. 2270, R.C.M. 1921; amd. Sec. 1, Ch. 142, L. 1925; re-en. Sec. 2270, R.C.M. 1935; amd. Sec. 85, Ch. 405, L. 1973; R.C.M. 1947, 84-4503; amd. Sec. 5, Ch. 501, L. 1981; amd. Sec. 2, Ch. 811, L. 1991.

15-1-404. Other remedies superseded. The remedies hereby provided shall supersede the remedy of injunction and all other remedies which might be invoked to prevent the collection of taxes or licenses alleged to be irregularly levied or demanded, except in unusual cases where the remedies hereby provided are deemed by the court to be inadequate.

History: En. Sec. 4026, Pol. C. 1895; re-en. Sec. 2745, Rev. C. 1907; re-en. Sec. 2272, R.C.M. 1921; re-en. Sec. 2272, R.C.M. 1935; R.C.M. 1947, 84-4504; amd. Sec. 7, Ch. 463, L. 1981.

15-1-405. Injunction not to be used to restrain enforcement of tax. No injunction must be granted by any court or judge to restrain the collection of any tax or any part thereof or to restrain the sale of any property for the nonpayment of taxes except:

(1) where the tax or the part thereof sought to be enjoined is illegal or is not authorized by law. If the payment of a part of a tax is sought to be enjoined, the other part must be paid before an action can be commenced.

(2) where the property is exempt from taxation.

History: En. Sec. 204, p. 128, L. 1891; re-en. Sec. 4023, Pol. C. 1895; re-en. Sec. 2741, Rev. C. 1907; re-en. Sec. 2268, R.C.M. 1921; re-en. Sec. 2268, R.C.M. 1935; R.C.M. 1947, 84-4505.

15-1-406. Declaratory judgment. (1) An aggrieved taxpayer may bring a declaratory judgment action in the district court seeking a declaration that:

(a) an administrative rule or method or procedure of assessment or imposition of tax adopted or used by the department is illegal or improper; or

(b) a tax authorized by the state or one of its subdivisions was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax.

(2) The action must be brought within 90 days of the date the notice of the tax due was sent to the taxpayer or, in the case of an assessment covered by the uniform dispute review procedure set forth in 15-1-211, within 90 days of the date of the department director's final decision. The court shall consolidate all actions brought under subsection (1) that challenge the same tax. The decision of the court applies to all similarly situated taxpayers, except those taxpayers who are excluded under 15-1-407.

(3) The taxes that are being challenged under this section must be paid under protest when due as a condition of continuing the action. Property taxes are paid under protest as provided in 15-1-402. All other taxes administered by the department, except estate taxes, are paid under protest by filing timely claims for refund and by following the uniform dispute review procedures of 15-1-211. Estate taxes are paid under protest by following the procedures set forth in Title 72.

(4) The remedy authorized by this section may not be used to challenge the:

(a) market value of property under a property tax unless the challenge is to the legality of a particular methodology that is being applied to similarly situated taxpayers; or

(b) legality of a tax other than a property tax or estate tax unless the review pursuant to 15-1-211 has been completed.

(5) The remedy authorized by this section is the exclusive method of obtaining a declaratory judgment concerning a tax authorized by the state or one of its subdivisions. The remedy authorized by this section supersedes the Uniform Declaratory Judgments Act established in Title 27, chapter 8. This section does not affect actions for declaratory judgments under 2-4-506.

History: En. Secs. 1, 4, Ch. 463, L. 1981; amd. Sec. 3, Ch. 811, L. 1991; amd. Sec. 1, Ch. 21, L. 1993; amd. Sec. 2, Ch. 594, L. 1993; amd. Sec. 1, Ch. 348, L. 1995; amd. Sec. 2, Ch. 36, L. 1999; amd. Sec. 5, Ch. 9, Sp. L. May 2000.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 in (3) in third and fourth sentences before reference to estate taxes deleted reference to inheritance taxes; in (4)(b) after "property tax" deleted "inheritance tax"; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

15-1-407. Alternative remedy — procedure. (1) Except as provided in subsection (2), an action pursuant to 15-1-406 is subject to the provisions of Title 27, chapter 8.

(2) In lieu of the requirement of 27-8-301, a party bringing an action under 15-1-406 may elect to use:

(a) the procedures available under the Montana Rules of Civil Procedure for bringing a class action, Title 25, chapter 20, rule 23. This includes the requirement that to be a member of the class, a taxpayer must be similarly situated to the representative class member and must have paid the tax under protest as provided in 15-1-406(3).

(b) the procedure provided for in subsection (3).

(3) (a) A party bringing an action under 15-1-406 may elect to give notice as provided in this subsection. A party so electing shall publish notice that an action has been brought. The notice must be published at least once each week for 4 consecutive weeks in a newspaper of general circulation published in the county where the action is commenced and in other counties within the jurisdiction of the taxing authority. The notice must advise each similarly situated taxpayer that:

(i) the court will exclude the taxpayer from the class if the taxpayer so requests by a specific date;

(ii) the judgment, whether favorable or not, will include all similarly situated taxpayers who do not request to be excluded; and

(iii) any similarly situated taxpayer who does not request exclusion may, if the taxpayer desires, enter an appearance.

(b) The court shall exclude a taxpayer from an action brought pursuant to 15-1-406 if the person bringing the action publishes notice as provided in subsection (3) of this section and the taxpayer requests to be excluded by the date specified in the notice.

(c) An election to give notice under subsection (3) does not prevent any party to the action from serving process on other interested parties.

(d) This section governs alternative notice. This section does not alter the requirement under Rule 23, Montana Rules of Civil Procedure, that to be a member of the class, a taxpayer must have paid the tax under protest as provided in 15-1-406(3).

(4) In a proceeding under 15-1-406 all issues must be tried by the court.

History: En. Sec. 2, Ch. 463, L. 1981; amd. Sec. 2, Ch. 348, L. 1995.

15-1-408. Alternative remedy — judgment. If the district court determines that the tax was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax, the judgment may direct:

(1) that the revenue collected under the illegal tax be directly refunded to the taxpayers who have paid the illegal tax and who have not been excluded from the action;

(2) that the revenue collected under the illegal tax be used to reduce a similar levy in the ensuing tax year;

(3) that the assessment be changed for the taxpayer or taxpayers who brought the action as well as for all similarly situated taxpayers; or

(4) any other remedy as the court considers appropriate.

History: **En. Sec. 3, Ch. 463, L. 1981; amd. Sec. 3, Ch. 594, L. 1993.**

15-1-409 through 15-1-420 reserved.

15-1-421. Payment of taxes by negotiable instrument. The department of revenue is not bound by a special, qualified, conditional, or restrictive endorsement placed on a negotiable instrument by the maker or drawer, tendered to the department for the payment of a tax liability, unless:

(1) the taxpayer and the department have previously entered into a written agreement that specifies the amount of the taxpayer's liability; and

(2) the amount tendered is in accordance with the written agreement.

History: **En. Sec. 1, Ch. 17, L. 1989.**

Cross-References

U.C.C. — restrictive endorsements, 30-3-205.

Part 5
Disposition of Tax Proceeds

Part Cross-References

Tax purposes, Art. VIII, sec. 1, Mont. Const.

15-1-501. Disposition of money from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

(a) income taxes, interest, and penalties collected under chapter 30;

(b) all taxes, interest, and penalties collected under chapter 31;

(c) oil and natural gas production taxes distributed to the general fund under 15-36-324;

(d) electrical energy producer's license taxes under chapter 51;

(e) the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;

(f) liquor license taxes under Title 16;

(g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(h) estate taxes under Title 72, chapter 16; and

(i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes and all net revenue and receipts from all sources, other than certain fees, under the operation of the Montana Alcoholic Beverage Code.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded.

History: **En. Sec. 1, Ch. 14, L. 1941; amd. Sec. 51, Ch. 147, L. 1963; amd. Sec. 6, Ch. 276, L. 1965; amd. Sec. 51, Ch. 100, L. 1973; amd. Sec. 1, Ch. 300, L. 1975; R.C.M. 1947, 84-1901(part); amd. Sec. 9, Ch. 634, L. 1979; amd. Sec. 2, Ch. 700, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 619, L. 1983; amd. Sec. 1, Ch. 707, L. 1983; amd. Sec. 4, Ch. 277, L. 1985; amd. Sec. 2, Ch. 611, L. 1987; amd. Sec. 1, Ch. 666, L. 1987; amd. Sec. 64, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 626, L. 1991; amd. Secs. 47, 55, Ch. 767, L. 1991; amd. Sec. 1, Ch. 455, L. 1993; amd. Sec. 7, Ch. 593, L. 1993; amd. Sec. 10, Ch. 18, L. 1995; amd. Sec. 27, Ch. 451, L. 1995; amd. Sec. 12, Ch. 48, L. 1997; amd. Sec. 68, Ch. 382, L. 1997; amd. Sec. 7, Ch. 422, L. 1997; amd. Sec. 7, Ch. 466, L. 1997; amd. Sec. 31, Ch. 426, L. 1999; amd. Sec. 6, Ch. 9, Sp. L. May 2000; amd. Sec. 15, Ch. 7, L. 2001; amd. Sec. 1, Ch. 306, L. 2001; amd. Sec. 1, Ch. 448, L. 2001; amd. Sec. 93, Ch. 574, L. 2001.**

Compiler's Comments

2001 Amendments — Composite Section: Chapter 7 in (1)(e) at beginning deleted "[an amount equal to 25% of]". Amendment effective October 1, 2001.

Chapter 306 in (1)(c) near middle after "taxes" substituted "distributed to the general fund under 15-36-324" for "allocated under 15-36-324(8)(a) and (10)(a)". Amendment effective April 21, 2001.

Chapter 448 at beginning of (1)(e) deleted "[an amount equal to 25% of]"; in (2) near middle after "taxes" deleted "and fees" and after "sources" inserted "other than certain fees"; and made minor changes in style. Amendment effective April 30, 2001.

Chapter 574 at beginning of (1)(b) deleted "except as provided in 15-31-702"; at end of (1)(c) substituted "15-36-324(9)(a) and (11)(a)" for "15-36-324(8)(a) and (10)(a)" (amendment changed by Ch. 306); and at beginning of (1)(e) deleted "[an amount equal to 25% of]". Amendment effective July 1, 2001.

Retroactive Applicability: Section 6, Ch. 306, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to distributions made after June 30, 2000."

Applicability: Section 6, Ch. 448, L. 2001, provided: "[Sections 1 and 2] [15-1-501 and 16-2-108] apply to fees collected after June 30, 2001."

2000 Amendment by Referendum: Chapter 9 at beginning of (1)(h) deleted reference to inheritance taxes; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

Cross-References

Disposition of coal severance taxes, 15-35-108.
Disposition of resource indemnity trust tax, 15-38-106.
Disposition of cement producer's and dealer's tax, 15-59-108.
Disposition of gasoline tax, 15-70-101.
Montana Alcoholic Beverage Code, Title 16, ch. 1 through 4, 6.
General fund, 17-2-102.
Taxing power pledged for payment of long-range building program bonds, 17-5-402.
Percentage of income and corporation license taxes pledged for payment of long-range building program bonds, 17-5-407.
Percentage of income and corporation license taxes appropriated to debt service account, 17-5-408.
Taxing power pledged for payment of general obligation highway bonds, 17-5-501.
Taxing power pledged for payment of rent incurred in lease of buildings, 18-3-101.
State equalization aid to public schools, 20-9-343.
Disposition of tax and fees in lieu of tax on vehicles, 61-3-509.
Taxing power not pledged for payment of housing bonds, 90-6-123.

15-1-502. Repealed. Sec. 34, Ch. 455, L. 1993.

History: En. Sec. 1, Ch. 126, L. 1963; amd. Sec. 14, Ch. 516, L. 1973; R.C.M. 1947, 84-725.

15-1-503. Refund of overpayment — procedure. (1) When there has been an overpayment of the estate tax collected by county treasurers or any other tax collected by the department and there is no law providing for a refund, the department shall refund the amount of the overpayment to the taxpayer, plus any interest and penalty due the taxpayer, as provided in subsection (2).

(2) A refund or payment is not allowed unless a claim is filed by the taxpayer before the expiration of 5 years from the time that the tax was paid. Within 6 months after the claim is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer within 60 days after the claim is approved. If the claim is disallowed, the department shall notify the taxpayer and shall grant a hearing on the claim. If the department disapproves a claim after holding a hearing, the determination of the department may be reviewed as provided by 15-30-148.

History: En. Sec. 2, Ch. 126, L. 1963; amd. Sec. 15, Ch. 516, L. 1973; R.C.M. 1947, 84-726; amd. Sec. 7, Ch. 9, Sp. L. May 2000.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 near beginning of (1) substituted "estate tax" for "inheritance tax"; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

Cross-References

Applicable to refund of tax on tobacco products other than cigarettes, 16-11-206.
Inheritance tax, Title 72, ch. 16.

15-1-504. Settlement of county treasurer with department. (1) Except as provided in subsection (2), the county treasurer, between the 1st and 20th days of each month, shall remit to the department all money belonging to the state that was collected by the county treasurer during the preceding month. The remittance must be accompanied by a detailed report upon a form that the department prescribes. The department may assess counties an interest charge of 10% a year on all money not remitted within 5 days from the time required by this section.

(2) By June 20 of each year, the county treasurer shall remit to the department an estimate of all money belonging to the state that was collected by the county treasurer by June 15, in addition to the amount collected during the preceding month. In July, the county treasurer shall remit all money belonging to the state that was collected by the county treasurer during the remainder of June.

History: En. Sec. 3990, Pol. C. 1895; re-en. Sec. 2715, Rev. C. 1907; re-en. Sec. 2255, R.C.M. 1921; Cal. Pol. C. Sec. 3865; amd. Sec. 1, Ch. 47, L. 1925; re-en. Sec. 2255, R.C.M. 1935; R.C.M. 1947, 84-4401; amd. Sec. 1, Ch. 72, L. 1991; amd. Sec. 1, Ch. 4, Sp. L. July 1992; amd. Sec. 1, Ch. 102, L. 1993; amd. Sec. 6, Ch. 257, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 257 throughout section substituted references to department (of revenue) for references to state treasurer. Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

15-1-505. Repealed. Sec. 36, Ch. 451, L. 1993.

History: En. Sec. 3992, Pol. C. 1895; re-en. Sec. 2717, Rev. C. 1907; re-en. Sec. 2257, R.C.M. 1921; Cal. Pol. C. Sec. 3868; amd. Sec. 2, Ch. 47, L. 1925; re-en. Sec. 2257, R.C.M. 1935; R.C.M. 1947, 84-4402.

15-1-506. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

History: En. Sec. 199, p. 128, L. 1891; re-en. Sec. 4016, Pol. C. 1895; re-en. Sec. 2734, Rev. C. 1907; re-en. Sec. 2042, R.C.M. 1921; re-en. Sec. 2042, R.C.M. 1935; amd. Sec. 21, Ch. 405, L. 1973; R.C.M. 1947, 84-448.

15-1-507 through 15-1-515 reserved.

15-1-516. Terminated. Sec. 39(2), Ch. 15, Sp. L. July 1992.

History: En. Sec. 4, Ch. 15, Sp. L. July 1992.

15-1-517 through 15-1-520 reserved.

15-1-521. Property valuation improvement fund. There is an account in the state special revenue fund to be used by the department for increasing the efficiency of the property appraisal, assessment, and taxation process through improvements in technology and administration. The department shall deposit fees collected pursuant to 2-6-110(3) in the account.

History: En. Sec. 2, Ch. 27, Sp. L. November 1993; amd. Sec. 55, Ch. 42, L. 1997.

Part 6
Multistate Tax Compact

Part Cross-References

Advisory Council for Multistate Tax Compact, 2-15-1311.

15-1-601. Compact adopted — text. The Multistate Tax Compact is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as set forth herein below. Article VIII of the Multistate Tax Compact relating to interstate audits is specifically adopted.

Article I. Purposes

The purposes of this compact are to:

(1) facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes;

(2) promote uniformity or compatibility in significant components of tax systems;

(3) facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration;

(4) avoid duplicative taxation.

Article II. Definitions

As used in this compact:

(1) "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(2) "subdivision" means any government unit or special district of a state;

(3) "taxpayer" means any corporation, partnership, firm, association, governmental unit or agency, or person acting as a business entity in more than one state;

(4) "income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions;

(5) "capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety;

(6) "gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax;

(7) "sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller or which is customarily separately stated from the sales price but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles;

(8) "use tax" means a nonrecurring tax, other than a sales tax, which:

(a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession, or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property; and

(b) is complementary to a sales tax;

(9) "tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV, and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

Article III. Elements Of Income Tax Laws

Taxpayer Option, State and Local Taxes

(1) Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this subsection, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form

(2) Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of $100,000 may elect to report and pay any tax due on the basis of a percentage of such volume and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in 5 years, may adjust the $100,000 figure in order to reflect such changes as

may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the $100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this subsection.

Coverage

(3) Nothing in this article relates to the reporting or payment of any tax other than an income tax.

Article IV. Division Of Income

(1) As used in this article, unless the context otherwise requires:

(a) "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations;

(b) "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed;

(c) "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services;

(d) "financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company;

(e) "nonbusiness income" means all income other than business income;

(f) "public utility" means any business entity:

(i) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water, or steam; and

(ii) whose rates of charges for goods or services have been established or approved by a federal, state, or local government or governmental agency;

(g) "sales" means all gross receipts of the taxpayer not allocated under subsections of this article;

(h) "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof;

(i) "this state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

(2) Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this article, the taxpayer may elect to allocate and apportion his entire net income as provided in this article.

(3) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

(a) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(b) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(4) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (5) through (8) of this article.

(5) (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state; or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(6) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property had a situs in this state at the time of the sale; or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(7) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(8) (a) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the payer in this state; or

(ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(9) All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is 3.

(10) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

(11) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(12) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(13) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

(14) Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state;

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and:

(i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(15) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(16) Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and:

(i) the purchaser is the United States government; or

(ii) the taxpayer is not taxable in the state of the purchaser.

(17) Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(18) If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Article V. Elements Of Sales And Use Tax Laws

Tax Credit

(1) Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates — Vendors May Rely

(2) Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

Article VI. The Commission

Organization and Management

(1) (a) The Multistate Tax Commission is hereby established. It shall be composed of one member from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency, the state shall provide by law for the selection of the commission member from the

heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate, but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under subsection (1)(e) of this article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings and shall provide for the giving of notice of annual, regular, and special meetings. Notice of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees

(2) (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice-chairman, treasurer, and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers

(3) In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) study state and local tax systems and particular types of state and local taxes;

(b) develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration;

(c) compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws;

(d) do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance

(4) (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this subsection.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under subsection (1)(i) of this article, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under subsection (1)(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any person authorized by the commission.

(f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VII. Uniform Regulations And Forms

(1) Whenever any two or more party states or subdivisions of party states have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

(2) Prior to the adoption of any regulation, the commission shall:

(a) as provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings;

(b) afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

(3) The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

Article VIII. Interstate Audits

(1) This article shall be in force only in those party states that specifically provide therefor by statute.

(2) Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records, or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

(3) The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property, or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident, provided that such state has adopted this article.

(4) The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article, and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this subsection apply only to courts in a state that has adopted this article.

(5) The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

(6) Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions, or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

(7) Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.

(8) In no event shall the commission make any charge against a taxpayer for an audit.

(9) As used in this article, “tax”, in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

Article IX. Arbitration

(1) Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of Article VII.

(2) The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

(3) Whenever a taxpayer who has elected to employ Article IV or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein and agrees to be bound thereby.

(4) The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this subsection shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residents within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this subsection.

(5) The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence, or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

(6) The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

(7) The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoenas, and the court may punish failure to obey the order as a contempt. The provisions of this subsection apply only in states that have adopted this article.

(8) Unless the parties otherwise agree, the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

(9) The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

(10) The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board, the board's written statement of its reasons

therefor, the record of the board's proceedings, and any other documents required by the arbitration rules of the commission to be filed.

(11) The commission shall publish the determinations of boards, together with the statements of the reasons therefor.

(12) The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

(13) Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceedings.

Article X. Entry Into Force And Withdrawal

(1) This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(3) No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

Article XI. Effect On Other Laws And Jurisdiction

Nothing in this compact shall be construed to:

(1) affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III, subsection (2), of this compact;

(2) apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided that the definition of "tax" in Article VIII, subsection (9), may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to Article VI, subsection (3), may apply;

(3) withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation, or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body;

(4) supersede or limit the jurisdiction of any court of the United States.

Article XII. Construction And Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 17, L. 1969; amd. Sec. 1, Ch. 249, L. 1973; amd. Sec. 1, Ch. 163, L. 1975; R.C.M. 1947, 84-6701.

15-1-602. Montana compact commissioner — director of revenue. The director of the department of revenue shall represent this state on the multistate tax commission.

History: En. Sec. 2, Ch. 17, L. 1969; amd. Sec. 118, Ch. 405, L. 1973; R.C.M. 1947, 84-6702.

15-1-603. Alternate. The member representing this state on the multistate tax commission may be represented thereon by an alternate designated by him.

History: En. Sec. 3, Ch. 17, L. 1969; amd. Sec. 119, Ch. 405, L. 1973; R.C.M. 1947, 84-6703.

15-1-604. Not codified. Committee abolished. Sec. 1, 82A-1806, Ch. 272, L. 1971.
History: En. Sec. 4, Ch. 17, L. 1969; amd. Sec. 27, Ch. 453, L. 1977; R.C.M. 1947, 84-6704.

Part 7
Collection of Delinquent Taxes — Warrant for Distraint

15-1-701. Warrant for distraint. (1) A warrant for distraint is an order, under the official seal of the department or of the department of transportation, directed to a sheriff of a county of Montana or to an agent authorized by law to collect a tax. The order commands the recipient to levy upon and sell the real and personal property of a delinquent taxpayer.

(2) Upon filing the warrant as provided in 15-1-704, there is a lien against all real and personal property of the delinquent taxpayer located in the county where the warrant is filed. The resulting lien is treated in the same manner as a properly docketed judgment lien, the department is a judgment lien creditor, and the department may collect delinquent taxes and enforce the tax lien in the same manner as a judgment is enforced, except that the department may enforce the judgment lien at any time within 10 years of its creation or effective date, whichever is later.

(3) A warrant may be issued for the amount of unpaid tax plus accumulated penalty, if any, and accumulated interest. The lien is for the amount indicated on the warrant plus accrued penalty and interest from the date of the warrant. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.

(4) The accelerated priority date provided for in (3) is not valid against purchasers, holders of security interests, judgment lien creditors, and those lienholders identified in Title 71, chapter 3, parts 3 through 15, whose interest is recorded prior to the filing of the warrant for distraint.

History: En. Sec. 1, Ch. 439, L. 1981; amd. Sec. 11, Ch. 512, L. 1991; amd. Sec. 1, Ch. 365, L. 1995; amd. Sec. 7, Ch. 529, L. 1995; amd. Sec. 1, Ch. 108, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 108 in (3) in first sentence substituted "accumulated penalty" for "penalty" and in second sentence after "accrued" inserted "penalty and"; and made minor changes in style. Amendment effective July 1, 2001.

15-1-702. Issuance of warrant. (1) If a tax administered and collected by the department is not paid within 30 days of the due date, the department may issue a notice to the taxpayer notifying him that unless payment is received within 30 days of the date of the notice a warrant for distraint may be issued. Thirty days after the date of the notice, the department may issue a warrant if payment is not received.

(2) Use of the procedure to issue a warrant under this section does not preclude use of the procedure under 15-1-703 if the department determines that it is appropriate to utilize 15-1-703.

History: En. Sec. 2, Ch. 439, L. 1981; amd. Sec. 1, Ch. 131, L. 1989.

15-1-703. Emergency issuance of warrant. (1) The department may issue a warrant for distraint without waiting for the expiration of either 30-day period provided for in 15-1-702 if:

(a) the department determines that the collection of the tax is or may be jeopardized because of the delay imposed by the waiting period; or

(b) the tax involved is a tax considered to be held in trust by the taxpayer under state law.

(2) Whenever the provisions of this section are utilized, the department must notify the taxpayer that warrants have been issued.

History: En. Sec. 3, Ch. 439, L. 1981.

15-1-704. Filing with district court. (1) After issuing a warrant, the department may file the warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the name of the taxpayer listed as the judgment debtor.

(2) A copy of the filed warrant may be sent by the department to the sheriff or agent authorized to collect the tax.

(3) A judgment lien filed pursuant to this section may be renewed for another 10-year period, upon motion, or by judgment for that purpose founded upon supplemental pleadings.

History: En. Sec. 4, Ch. 439, L. 1981; amd. Sec. 8, Ch. 529, L. 1995; amd. Sec. 56, Ch. 42, L. 1997; amd. Sec. 5, Ch. 515, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 515 at end of (3) substituted "upon motion, or by judgment for that purpose founded upon supplemental pleadings" for "pursuant to the methods provided in 25-13-102". Amendment effective October 1, 2001.

15-1-705. Review. (1) Except as provided in 15-1-707, a taxpayer has the right to a review of the tax liability pursuant to 15-1-211 prior to execution on a filed warrant for distraint.

(2) The department must provide notice of the right to review to the taxpayer. This notice may be given prior to the notice referred to in 15-1-702. If the taxpayer notified the department that he disagrees with an assessment as provided in 15-1-211, the warrant may not be executed upon until after the review process and any appeals are completed.

History: En. Sec. 5, Ch. 439, L. 1981; amd. Sec. 4, Ch. 811, L. 1991.

15-1-706. Execution upon warrant. (1) Upon receipt of a copy of the filed warrant and notice from the department that the applicable hearing provisions have been complied with, the sheriff or agent authorized to collect the tax shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(2) A notice of levy may be made by means of a certified letter by an agent authorized to collect the tax. An agent is not entitled to any fee or compensation in excess of actual expenses incurred in enforcing the warrant.

(3) When issued, a notice of levy has the same force and effect as a writ of execution. A levy upon earnings continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to all pay periods beginning during the 120-day period.

(4) A sheriff or agent shall return a warrant, along with any funds collected, within 90 days of the date of the warrant.

(5) If the warrant is returned not satisfied in full, the department has the same remedies to collect the deficiency as are available for any civil judgment.

History: En. Sec. 6, Ch. 439, L. 1981; amd. Sec. 1, Ch. 397, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 397 inserted (3) concerning notice of levy having effect of writ of execution and concerning duration of levy upon earnings; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Execution of judgment, Title 25, ch. 13.

15-1-707. Emergency execution upon warrant. (1) The department may execute upon a filed warrant for distraint without providing an opportunity for a hearing prior to execution if the department determines that the collection of the tax is jeopardized because of the delay imposed by the hearing requirement.

(2) When the provisions of this section are utilized, the department must notify the taxpayer and inform the taxpayer that he has a right to request a hearing to be held subsequent to execution. A hearing, if desired, must be requested in writing within 30 days of the date of the notice and, if requested, must be held as soon as possible. The commencement of a proceeding under 15-1-705 does not preclude the use of the provisions of this section if the department determines that such action is appropriate.

History: En. Sec. 7, Ch. 439, L. 1981.

15-1-708. Release of lien. (1) Upon payment in full of the unpaid tax plus accumulated penalty, if any, and accumulated interest, the department shall release the lien acquired by filing the warrant for distraint.

(2) Upon partial payment or whenever the department determines that a release or partial release of the lien will facilitate the collection of the unpaid tax, penalty, and interest, the department may release or may partially release the lien acquired by filing the warrant for distraint. The department may release the lien if it determines that the lien is unenforceable.

(3) (a) After making all reasonable efforts to collect unpaid taxes, penalties, and interest on the taxes and penalties, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may proceed as provided in 17-4-104.

(b) Reasonable fees or costs of collection incurred by the department may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be applied to the debt, except that all fees or costs collected must be retained by the department. If less than the full amount of the debt is collected, the department shall retain only a proportionate share of the collection fees or costs.

History: En. Sec. 8, Ch. 439, L. 1981; amd. Secs. 11, 16, Ch. 529, L. 1995; amd. Sec. 16, Ch. 7, L. 2001; amd. Sec. 2, Ch. 108, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 7 in last sentence of (3)(a) after "may" substituted "proceed" for "transfer the debt to the department of administration for collection"; in (3)(b) in three places after "department" deleted "of administration", at beginning of first sentence deleted "Subject to approval by the department", and near middle of third sentence after "collected must be" deleted "returned to the department to be"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 108 in (1) substituted "accumulated penalty" for "penalty". Amendment effective July 1, 2001.

15-1-709. Remedy not exclusive. The use of the warrant for distraint provided for in 15-1-701 through 15-1-708 is not exclusive, and the department may use any other remedy provided by law for the collection of tax debts.

History: En. Sec. 9, Ch. 439, L. 1981.

Part 8
Payment of Taxes By Electronic Funds Transfer

15-1-801. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(3) "Taxes" means the taxes provided for in this title, except chapters 70 and 71.

History: En. Sec. 1, Ch. 96, L. 1985; amd. Sec. 3, Ch. 561, L. 1995.

15-1-802. Taxes to be paid by electronic funds transfer — limitation. All taxes due the state must be paid by electronic funds transfer whenever the amount due is $500,000 or greater. Whenever the payment of taxes is required to be made by electronic funds transfer under this section and the due date falls on a Saturday, Sunday, or legal holiday, the payment may be made on the first business day thereafter.

History: En. Sec. 2, Ch. 96, L. 1985.

15-1-803. Rules. The department shall adopt rules necessary to implement this part, including but not limited to rules:

(1) coordinating the filing of tax returns with the payment of taxes by electronic funds transfer; and

(2) specifying the form and content of electronic funds transfer messages in order to ensure the proper receipt and crediting of the tax payment.

History: En. Sec. 3, Ch. 96, L. 1985.

Part 9 reserved

Part 10
Homeowner Property Tax Payment
(Terminated. Sec. 15, Ch. 574, L. 1995)

Part Compiler's Comments

Histories of Terminated Sections:

15-1-1001. En. Sec. 1, Ch. 574, L. 1995.
15-1-1002. En. Sec. 2, Ch. 574, L. 1995.
15-1-1003. En. Sec. 3, Ch. 574, L. 1995.
15-1-1004. En. Sec. 4, Ch. 574, L. 1995.
15-1-1005. En. Sec. 5, Ch. 574, L. 1995.

15-1-1006. En. Sec. 6, Ch. 574, L. 1995.
15-1-1007. En. Sec. 7, Ch. 574, L. 1995.

CHAPTER 2

STATE TAX APPEAL BOARD

Part 1 — Composition and Organization

15-2-101. State tax appeal board — appointment of members — term of office.
15-2-102. Qualification and compensation.
15-2-103. Organization, quorum, sessions.
15-2-104. Employees — expenses — minutes — rules.
15-2-105. Office, furnishings, and supplies.
15-2-106. Seal.

Part 2 — Powers and Duties

15-2-201. Powers and duties.

Part 3 — Appeal Procedure

15-2-301. Appeal of county tax appeal board decisions.
15-2-302. Direct appeal from department decision to state tax appeal board — hearing.
15-2-303. Judicial review.
15-2-304. Petition for interlocutory adjudication.
15-2-305. Jurisdiction to make interlocutory adjudication.
15-2-306. Board may order refund.
15-2-307 through 15-2-310. Repealed.

Chapter Cross-References

Tax appeals, Art. VIII, sec. 7, Mont. Const.
Creation of State Tax Appeal Board, 2-15-1015.
State Board or Board defined as State Tax Appeal Board, 15-1-101.
County Tax Appeal Board, Title 15, ch. 15, part 1.

Part 1

Composition and Organization

15-2-101. State tax appeal board — appointment of members — term of office. On July 1, 1973, there shall be created a state tax appeal board which shall be composed of three members to be appointed by the governor for staggered terms by and with the advice and consent of the senate; provided, however, a member so appointed may serve until the next regular session of the legislature without such advice and consent. Each succeeding member shall hold his office for a term of 6 years and until his successor shall be appointed and shall have qualified. Any vacancy shall be filled by the governor subject to confirmation by the senate during the next legislative session. Succeeding appointments, except when made to fill a vacancy, shall be made on or before January 31 during the session of the legislature next preceding the commencement of the term for which the appointment is made.

History: En. Sec. 1, Ch. 3, L. 1923; re-en. Sec. 2122.1, R.C.M. 1935; amd. Sec. 50, Ch. 100, L. 1973; amd. Sec. 45, Ch. 405, L. 1973; R.C.M. 1947, 84-701.

15-2-102. Qualification and compensation. (1) To be appointed a member of the state tax appeal board, a person must possess knowledge of the subject of taxation and skill in matters pertaining thereto. No person so appointed may hold any other state or any office under the government of the United States or under the government of any other state. The person shall devote the entire time to the duties of the office and shall not hold any other position of trust or profit or engage in any occupation or business interfering or inconsistent with the person's duties. The state tax appeal board is transferred to the department of administration for administrative purposes only as is specified in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(2) State tax appeal board members shall be paid a salary equivalent to that of a grade 17 salary as provided in 2-18-312. State tax appeal board members must receive pay and pay adjustments consistent with those required by the legislature for classified state employees in 2-18-303 and 2-18-304. The member designated as presiding officer as provided for in 15-2-103 must have an additional 5% added to the salary. All members of the board shall receive travel expenses as provided for in 2-18-501 through 2-18-503, as amended, when away from the capital on official business.

History: En. Sec. 2, Ch. 3, L. 1923; re-en. Sec. 2122.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1953; amd. Sec. 8, Ch. 225, L. 1963; amd. Sec. 13, Ch. 237, L. 1967; amd. Sec. 46, Ch. 405, L. 1973; amd. Sec. 26, Ch. 453, L. 1977; R.C.M. 1947, 84-702; amd. Sec. 1, Ch. 620, L. 1979; amd. Sec. 5, Ch. 605, L. 1981; amd. Sec. 4, Ch. 656, L. 1983; amd. Sec. 2, Ch. 236, L. 1985; amd. Sec. 5, Ch. 693, L. 1985; amd. Sec. 13, Ch. 660, L. 1989; amd. Sec. 15, Ch. 720, L. 1991; amd. Sec. 17, Ch. 455, L. 1995.

15-2-103. Organization, quorum, sessions. The members of the state tax appeal board shall, without delay, meet at the state capital, and the governor shall designate one of their members as chairman. A majority of said board shall constitute a quorum. It shall be in continuous session and open for the transaction of business every day except Saturdays, Sundays, and legal holidays; and the sessions of said board shall stand and be deemed to be adjourned from day to day without formal entry thereof upon its records. The board may hold sessions or conduct hearings and investigations at other places than the capital when deemed necessary to facilitate the performance of its duties or to accommodate parties in interest.

History: En. Sec. 3, L. 1923; re-en. Sec. 2122.3, R.C.M. 1935; amd. Sec. 47, Ch. 405, L. 1973; R.C.M. 1947, 84-703.

15-2-104. Employees — expenses — minutes — rules. The state tax appeal board may appoint a secretary and employ such other persons as experts, assistants, clerks, and stenographers as may be necessary to perform the duties that may be required of it. The total expenses of such board shall not exceed, in the aggregate during any fiscal year, the amount appropriated for the board for all purposes by the legislature for such year. The secretary shall keep full and correct minutes of the transactions and proceedings of said board, shall have authority to administer oaths and perform such other duties as may be required of him. The board may make all needful rules for the orderly and methodical performance of its duties as a tax appeal board and for conducting hearings and other proceedings before it.

History: En. Sec. 5, Ch. 3, L. 1923; re-en. Sec. 2122.5, R.C.M. 1935; amd. Sec. 1, Ch. 82, L. 1947; amd. Sec. 49, Ch. 405, L. 1973; R.C.M. 1947, 84-705.

15-2-105. Office, furnishings, and supplies. The board shall keep its office at the capital and shall be provided with suitable and necessary offices and office furniture, printing, supplies, stationery, books, periodicals, and financial and commercial reports.

History: En. Sec. 6, Ch. 3, L. 1923; re-en. Sec. 2122.6, R.C.M. 1935; amd. Sec. 50, Ch. 405, L. 1973; R.C.M. 1947, 84-706.

15-2-106. Seal. The state tax appeal board shall have a seal and such seal shall have the following words engraved thereon, “Tax Appeal Board of the State of Montana”. The board shall authenticate all of its orders, records, and proceedings with such seal, and the courts of this state shall take judicial notice of such seal.

History: En. Sec. 17, Ch. 3, L. 1923; re-en. Sec. 2122.17, R.C.M. 1935; amd. Sec. 60, Ch. 405, L. 1973; R.C.M. 1947, 84-717.

Part 2
Powers and Duties

15-2-201. Powers and duties. (1) It is the duty of the state tax appeal board to:

(a) prescribe rules for the tax appeal boards of the different counties in the performance of their duties and for this purpose may schedule meetings of county tax appeal boards, and it is the duty of all invited county tax appeal board members to attend if possible, and the cost of their attendance must be paid from the appropriation of the state tax appeal board;

(b) grant, at its discretion, whenever good cause is shown and the need for the hearing is not because of taxpayer negligence, permission to a county tax appeal board to meet beyond the normal time period provided for in 15-15-101(2) to hear an appeal.

(c) hear appeals from decisions of the county tax appeal boards;

(d) hear appeals from decisions of the department of revenue in regard to business licenses, property assessments, taxes, except determinations that an employer-employee relationship existed between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2, and penalties.

(2) Oaths to witnesses in any investigation by the state tax appeal board may be administered by a member of the board or the member's agent. If a witness does not obey a summons to appear before the board or refuses to testify or answer any material questions or to produce records, books, papers, or documents when required to do so, that failure or refusal must be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to punish the witness for the neglect or refusal. A person who testifies falsely in any material matter under consideration by the board is guilty of perjury and punished accordingly. Witnesses attending shall receive the same compensation as witnesses in the district court. The compensation must be charged to the proper appropriation for the board.

(3) The state tax appeal board also has the duties of an appeal board relating to other matters as may be provided by law.

History: En. Sec. 8, Ch. 3, L. 1923; re-en. Sec. 2122.8, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1957; amd. Sec. 1, Ch. 227, L. 1963; amd. Sec. 1, Ch. 211, L. 1971; amd. Sec. 52(a), Ch. 405, L. 1973; amd. Sec. 3, Ch. 38, L. 1974; R.C.M. 1947, 84-708; amd. Sec. 1, Ch. 502, L. 1981; amd. Sec. 3, Ch. 529, L. 1995.

Cross-References

Witness fees in courts of record, 26-2-501.

Perjury, 45-7-201.

Part 3
Appeal Procedure

Part Cross-References

Department to defend property tax appeals, 15-8-115.

15-2-301. Appeal of county tax appeal board decisions. (1) The county tax appeal board shall mail a copy of its decision to the taxpayer and to the property assessment division of the department of revenue. If the appearance provisions of 15-15-103 have been complied with, a person or the department on behalf of the state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the state board by filing with the state tax appeal board a notice of appeal within 30 calendar days after the receipt of the decision of the county board. The notice must specify the action complained of and the reasons assigned for the complaint. Notice of acceptance of an appeal must be given to the county tax appeal board by the state tax appeal board. The state board shall set the appeal for hearing either in its office in the capital or the county seat as the board considers advisable to facilitate the performance of its duties or to accommodate parties in interest. The board shall give to the appellant and to the respondent at least 15 calendar days' notice of the time and place of the hearing.

(2) At the time of giving notice of acceptance of an appeal, the state board may require the county board to certify to it the minutes of the proceedings resulting in the action and all testimony taken in connection with its proceedings. The state board may, in its discretion, determine the appeal on the record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony. For the purpose of expediting its work, the state board may refer any appeal to one of its members or to a designated hearings officer. The board member or hearings officer may exercise all the powers of the board in conducting a hearing and shall, as soon as possible after the hearing, report the proceedings, together with a transcript or a tape recording of the hearing, to the board. The state board shall determine the appeal on the record.

(3) On all hearings at county seats throughout the state, the state board or the member or hearings officer designated to conduct a hearing may employ a competent person to electronically record the testimony received. The cost of electronically recording testimony may be paid out of the general appropriation for the board.

(4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or

modify any decision. To the extent that this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act. The state tax appeal board may not amend or repeal any administrative rule of the department. The state tax appeal board shall give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful.

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303.

(6) Sections 15-6-134 and 15-7-111 may not be construed to prevent the department from implementing an order to change the valuation of property.

History: En. Sec. 9, Ch. 3, L. 1923; re-en. Sec. 2122.9, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1939; amd. Sec. 54, Ch. 405, L. 1973; amd. Sec. 4, Ch. 38, L. 1974; amd. Sec. 1, Ch. 277, L. 1974; amd. Sec. 1, Ch. 155, L. 1977; amd. Sec. 1, Ch. 249, L. 1977; R.C.M. 1947, 84-709; amd. Sec. 1, Ch. 611, L. 1979; amd. Secs. 1, 2, Ch. 471, L. 1987; amd. Sec. 1, Ch. 247, L. 1991; amd. Sec. 4, Ch. 594, L. 1993; amd. Sec. 1, Ch. 15, Sp. L. November 1993; amd. Sec. 1, Ch. 134, L. 1997; amd. Sec. 81, Ch. 584, L. 1999.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Appeal by person aggrieved by state debt collection procedure, 17-4-111.

15-2-302. Direct appeal from department decision to state tax appeal board — hearing. (1) A person may appeal to the state tax appeal board a final decision of the department of revenue involving:

(a) property centrally assessed under chapter 23;

(b) classification of property as new industrial property;

(c) any other tax, other than the property tax, imposed under this title; or

(d) any other matter in which the appeal is provided by law.

(2) (a) Except as provided in subsection (2)(b), the appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department's final decision. The complaint must set forth the grounds for relief and the nature of relief demanded. The board shall immediately transmit a copy of the complaint to the department.

(b) An appeal from the department's determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department is initiated by filing a complaint with the board within 10 days following receipt of notice of the department's final determination. The board shall promptly mail a copy of the complaint to each interested party at the last-known address of each party.

(3) The department shall file with the board an answer within 30 days following filing of a complaint, or in cases involving a determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department, any interested party, as defined in 15-30-257(1)(e), and the department may file an answer with the board within 10 days after receipt of a copy of the complaint filed with the board, and at that time mail a copy to the complainant. The answer must set forth the department's response to each ground for and type of relief demanded in the complaint.

(4) (a) Except as provided in subsection (4)(b), the board shall conduct the appeal in accordance with the contested case provisions of the Montana Administrative Procedure Act.

(b) (i) In an appeal regarding the determination of whether wages earned by an unemployment insurance claimant were properly reported to the department, the appeal must be conducted informally and may, in the discretion of the board, be conducted by telephone or other electronic means. The appeal is not a contested case under provisions of the Montana Administrative Procedure Act. The board, in conducting the hearing or making its decision, is not bound by the Montana Rules of Evidence.

(ii) The board shall make its final decision within 45 days of the date the appeal is received by the board.

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303

and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303.

History: En. 84-709.4 by Sec. 2, Ch. 155, L. 1977; R.C.M. 1947, 84-709.4; amd. Sec. 1, Ch. 59, L. 1993; amd. Sec. 5, Ch. 594, L. 1993; amd. Sec. 9, Ch. 491, L. 1997.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
Appeal of penalty assessment for failure to furnish information to Department, 15-1-303.
New industrial property classification, 15-6-135, 15-6-192.
County Tax Appeal Board, Title 15, ch. 15, part 1.
Appeal of action of Department on application for revision of income tax, 15-30-147.
Appeal of action of Department on application for revision of corporation license or income tax, 15-31-532.
Appeal of determination of metalliferous mines license tax, 15-37-110.
Appeal of determination relating to gasoline and vehicle fuels taxes, 15-70-111.

15-2-303. Judicial review. (1) Any party to an appeal before the state tax appeal board who is aggrieved by a final decision is entitled to judicial review under this part.

(2) Proceedings for review must be instituted by filing a petition in district court in the county in which the taxable property or some portion of it is located, except the taxpayer has the option to file in the district court of the first judicial district. A petition for judicial review must be filed within 60 days after service of the final decision of the state tax appeal board or, if a rehearing is requested, within 60 days after service of the final decision. Copies of the petition must be promptly served on all parties of record. The department of revenue shall promptly notify the state tax appeal board, in writing, of any judicial review, but failure to do so has no effect on the judicial review. The department of revenue shall, on request, submit to the state tax appeal board a copy of all pleadings and documents.

(3) If the judicial review involves a taxpayer who is seeking a refund of taxes paid under protest, the appealing party shall provide a copy of the petition to the treasurer of the county in which the taxable property or some portion of it is located, but failure to do so has no effect on the judicial review.

(4) Proceedings for review of a decision by the state tax appeal board by a company under the jurisdiction of the public service commission must be instituted in the district court of the first judicial district.

(5) Notwithstanding the provisions of 2-4-704(1), the court may, for good cause shown, permit additional evidence to be introduced.

History: En. 84-708.1 by Sec. 52(b), Ch. 405, L. 1973; amd. Sec. 2, Ch. 277, L. 1974; amd. Sec. 1, Ch. 346; amd. Sec. 1, Ch. 404, L. 1975; R.C.M. 1947, 84-709.1; amd. Sec. 1, Ch. 77, L. 1981; amd. Sec. 6, Ch. 501, L. 1981; amd. Sec. 6, Ch. 594, L. 1993.

Cross-References

Review of decision relating to gasoline and vehicle fuels taxes, 15-70-111.
Costs allowed in action involving legality of any tax, 25-10-101, 25-10-102.
Public Service Commission jurisdiction, 69-1-102.

15-2-304. Petition for interlocutory adjudication. (1) (a) Either party, within 30 days of the filing of an answer to an appeal before the state tax appeal board, may file a petition for an interlocutory adjudication under 15-2-305. The petition may be filed with the district court:

(i) in the first judicial district;

(ii) in the county in which the taxable property is located; or

(iii) in cases not involving property taxes, in the county where the taxpayer resides or has his principal place of business in the state.

(b) The petition may raise any question involving procedure, the admissibility of evidence, or a substantive question of law raised by the pleadings within 30 days of filing an answer to the appeal with the state tax appeal board.

(c) A nonpetitioning party shall respond to the petition within 30 days after service of the petition. The response may raise any question not raised in the petition involving procedure, the admissibility of evidence, or a substantive question of law.

(2) After the 30-day period specified in subsection (1)(b) but before arguments have been heard, the parties to the proceeding may jointly petition a district court to make an

interlocutory adjudication as provided under 15-2-305. A petition for an adjudication must be signed by each party to the proceeding.

(3) In a petition under subsection (1) or (2), one party must be designated as the petitioner and every other party must be designated a respondent. The court may in its discretion grant a petition if it appears that the issues presented involve procedure, the admissibility of evidence, or a substantive question of law and do not require the determination of questions of fact and that the controversy would be more expeditiously resolved by an adjudication. If the court grants a petition, it shall rule on all issues presented in the petition and the response, regardless of whether a ruling on less than all of the issues is dispositive of the case.

History: En. 84-709.2 by Sec. 2, Ch. 404, L. 1975; R.C.M. 1947, 84-709.2(part); amd. Sec. 1, Ch. 506, L. 1987; amd. Sec. 1, Ch. 620, L. 1991.

15-2-305. Jurisdiction to make interlocutory adjudication. A district court may make an interlocutory adjudication of an issue pending before the state tax appeal board if that issue involves procedure, the admissibility of evidence, or a substantive question of law and does not require the determination of a question of fact. If the petition is granted, the district court shall rule on all issues presented in the petition and the response, regardless of whether a ruling on less than all of the issues is dispositive of the case. Appeals from the ruling of the court may be appealed as in other civil actions.

History: En. 84-709.3 by Sec. 3, Ch. 404, L. 1975; R.C.M. 1947, 84-709.3(part); amd. Sec. 2, Ch. 620, L. 1991.

Cross-References

Civil appeals, Title 25, ch. 21.

15-2-306. Board may order refund. (1) In any appeal before the state tax appeal board when a taxpayer has paid property taxes or fees under written protest and the taxes or fees are held by the treasurer of a unit of local government in a protest fund, the state tax appeal board shall enter judgment, exclusive of costs, if the board finds that the property taxes or fees should be refunded.

(2) The state tax appeal board's judgment issued pursuant to subsection (1) must be held in abeyance:

(a) until the time period for appeal has passed; or

(b) if the final decision of the state tax appeal board has been appealed in accordance with 15-2-303.

History: En. Sec. 2, Ch. 501, L. 1981; amd. Sec. 7, Ch. 594, L. 1993.

15-2-307 through 15-2-310. Repealed. Sec. 10, Ch. 594, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

15-2-307. En. Sec. 1, Ch. 526, L. 1981.
15-2-308. En. Sec. 2, Ch. 526, L. 1981.
15-2-309. En. Sec. 3, Ch. 526, L. 1981.
15-2-310. En. Sec. 4, Ch. 526, L. 1981.

CHAPTERS 3 THROUGH 5

RESERVED

CHAPTER 6

PROPERTY SUBJECT TO TAXATION

Part 1 — Classification

15-6-101. Property subject to taxation — classification.
15-6-102 through 15-6-105. Repealed.
15-6-106. Repealed.
15-6-107 through 15-6-120. Repealed.
15-6-121. Repealed.

15-6-122. Business equipment tax on business personal property.
15-6-123 through 15-6-130 reserved.
15-6-131. Class one property — description — taxable percentage.
15-6-132. Class two property — description — taxable percentage.
15-6-133. Class three property — description — taxable percentage.
15-6-134. Class four property — description — taxable percentage.
15-6-135. Class five property — description — taxable percentage.
15-6-136. Class six property — description — taxable percentage.
15-6-137. Class seven property — description — taxable percentage.
15-6-138. Class eight property — description — taxable percentage.
15-6-139. Repealed.
15-6-140. Repealed.
15-6-141. Class nine property — description — taxable percentage.
15-6-142. Repealed.
15-6-143. Class ten property — description — taxable percentage.
15-6-144. Repealed.
15-6-145. Class twelve property — description — taxable percentage.
15-6-146. Repealed.
15-6-147. Repealed.
15-6-148. Repealed.
15-6-149. Repealed.
15-6-150. Repealed.
15-6-151. Renumbered 15-6-191 by Code Commissioner, 1999.
15-6-152. Renumbered 15-6-192 by Code Commissioner, 1999.
15-6-153. Repealed.
15-6-154. Repealed.
15-6-155. Repealed.
15-6-156. Class thirteen property — description — taxable percentage.
15-6-157 through 15-6-190 reserved.
15-6-191. Application for certain class four classifications.
15-6-192. Application for classification as new industrial property.

Part 2 — Tax-Exempt Property

15-6-201. Exempt categories.
15-6-202. Freeport merchandise and business inventories exemption.
15-6-203. Veterans' clubhouse exemption — incompetent veterans' trusts.
15-6-204. Moneys and credits exemption.
15-6-205. State water conservation projects exempt.
15-6-206. Irrigation and drainage facilities — when exempt.
15-6-207. Agricultural exemptions.
15-6-208. Mineral exemptions.
15-6-209. Community services buildings exempt.
15-6-210. Repealed.
15-6-211. Certain disabled or deceased veterans' residences exempt.
15-6-212. Repealed.
15-6-213. Down-hole equipment in oil and gas wells exempt.
15-6-214. Terminated.
15-6-215. Exemption for motion picture and television commercial property.
15-6-216. Exemption of improvements made to commercial buildings to remove barriers to persons with disabilities.
15-6-217. Exemption for vehicle of certain health care professionals.
15-6-218. Intangible personal property exemption.
15-6-219 reserved.
15-6-220. Exemption for canola facilities and malting barley facilities.
15-6-221. Exemption for rental housing providing affordable housing to lower-income tenants.
15-6-222 through 15-6-224 reserved.
15-6-225. Energy equipment exemption.
15-6-226. Tax exemption for noncommercial electrical generation machinery and equipment.

Chapter Cross-References

Tax purposes, Art. VIII, sec. 1, Mont. Const.

Property tax administration, Art. VIII, sec. 3, Mont. Const.

Equal valuation, Art. VIII, sec. 4, Mont. Const.

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

Reservation of power to tax certain persons and property within land purchased by United States under Art. I, sec. 8, part 17, U.S. Const., 2-1-202.

Reservation of power to tax certain persons and property within Glacier National Park, 2-1-205.

Reservation of power to tax certain persons and property within land ceded to United States for Fort Peck Dam, 2-1-209.

Reservation of power to tax certain persons and property purchased for national forest purposes, 2-1-210.

Rights, privileges, and immunities reserved to Indians on assumption of criminal jurisdiction over Flathead Indian Reservation, 2-1-304.

Resort tax, Title 7, ch. 6, part 15.

Suspension of property taxes for persons in military services — application required, 10-1-606.

Taxable value defined, 15-1-101.

Taxation of condominium units, 15-8-511, 15-8-512.

Taxes on banks that have ceased to do business, 32-1-509.

Real and personal property of insurance guaranty association subject to taxation, 33-10-107.

Real property of life and health insurance guaranty association — subject to taxation, 33-10-208.

Taxation of motor vehicles, Title 61, ch. 3, part 5.

Owner of life estate under duty to pay taxes, 70-16-103.

Covenant to pay taxes or assessments runs with land, 70-17-203.

Payment of taxes required to prove adverse possession, 70-19-411.

Payment of property taxes on condominiums prior to completion and on filing of declaration, 70-23-304.

Taxation of property subject to conservation easement, 76-6-208.

Lessee of state land subject to personal property taxes, 77-6-114.

Part 1
Classification

Part Cross-References

Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

15-6-101. Property subject to taxation — classification. (1) All property in this state is subject to taxation, except as provided otherwise.

(2) For the purpose of taxation, the taxable property in the state shall be classified in accordance with this part.

History: (1)En. Sec. 1667, Comp. Stat. 1887; en. Sec. 1, p. 73, L. 1891; re-en. Sec. 3670, Pol. C. 1895; re-en. Sec. 2498, Rev. C. 1907; re-en. Sec. 1997, R.C.M. 1921; Cal. Pol. C. Sec. 3607; re-en. Sec. 1997, R.C.M. 1935; amd. Sec. 1, Ch. 126, L. 1977; Sec. 84-201, R.C.M. 1947; (2)En. 84-301.1 by Sec. 1, Ch. 566, L. 1977; Sec. 84-301.1, R.C.M. 1947; R.C.M. 1947, 84-201, 84-301.1; amd. Sec. 13, Ch. 686, L. 1979; amd. Sec. 15, Ch. 693, L. 1979; amd. Sec. 18, Ch. 712, L. 1979; amd. Sec. 2, Ch. 20, L. 1985; amd. Sec. 3, Ch. 681, L. 1985.

Cross-References

Suspension of property taxes for persons in military services, 10-1-606.

Property exempt from taxation, Title 15, ch. 6, part 2.

Extension of classifications under former energy-conservation tax incentive act, 15-32-108.

15-6-102 through 15-6-105. Repealed. Sec. 27, Ch. 693, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

15-6-102 through 15-6-109. En. 84-301.2 thru 84-301.9 by Secs. 2 thru 9, Ch. 566, L. 1977; R.C.M. 1947, 84-301.2 thru 84-301.9.

15-6-106. Repealed. Sec. 17, Ch. 634, L. 1979; Sec. 27, Ch. 693, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

15-6-102 through 15-6-109. En. 84-301.2 thru 84-301.9 by Secs. 2 thru 9, Ch. 566, L. 1977; R.C.M. 1947, 84-301.2 thru 84-301.9.

15-6-107 through 15-6-120. Repealed. Sec. 27, Ch. 693, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

15-6-102 through 15-6-109. En. 84-301.2 thru 84-301.9 by Secs. 2 thru 9, Ch. 566, L. 1977; R.C.M. 1947, 84-301.2 thru 84-301.9.

15-6-110. En. 84-301.10 by Sec. 10, Ch. 566, L. 1977; amd. Sec. 11, Ch. 566, L. 1977; R.C.M. 1947, 84-301.10.

15-6-111 through 15-6-114. En. 84-301.11 thru 84-301.14 by Secs. 12 thru 15, Ch. 566, L. 1977; R.C.M. 1947, 84-301.11 thru 84-301.14.

15-6-115. En. 84-301.15 by Sec. 16, Ch. 566, L. 1977; amd. Sec. 11, Ch. 566, L. 1977; R.C.M. 1947, 84-301.15.

15-6-116. En. 84-301.16 by Sec. 17, Ch. 566, L. 1977; amd. Sec. 2, Ch. 499, L. 1977; amd. Sec. 8, Ch. 576, L. 1977; R.C.M. 1947, 84-301.16.

15-6-117 through 15-6-119. En. 84-301.17 thru 84-301.19 by Secs. 18 thru 20, Ch. 566, L. 1977; R.C.M. 1947, 84-301.17 thru 84-301.19.

15-6-120. En. Sec. 15, Ch. 498, L. 1977; R.C.M. 1947, 84-310.20.

15-6-121. Repealed. Sec. 27, Ch. 693, L. 1979; Sec. 30, Ch. 712, L. 1979.

History: En. Sec. 3, Ch. 502, L. 1977; R.C.M. 1947, 84-301.21.

15-6-122. Business equipment tax on business personal property. A personal property tax applied to any class of personal property, excluding livestock, described in this part that belongs to, is claimed by, or is in the possession of or under the control or management of a sole proprietor, firm, association, partnership, business, corporation, or limited liability company is a business equipment tax.

History: En. Sec. 1, Ch. 347, L. 1995.

15-6-123 through 15-6-130 reserved.

15-6-131. Class one property — description — taxable percentage. (1) Class one property includes the annual net proceeds of all mines and mining claims except coal and metal mines.

(2) Class one property is taxed at 100% of its annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, for talc, as provided in 15-23-515 or, for vermiculite, as provided in 15-23-516 or, for limestone, as provided in 15-23-517 or, for industrial garnets and associated byproducts, as provided in 15-23-518.

History: En. Sec. 1, Ch. 693, L. 1979; amd. Sec. 1, Ch. 323, L. 1983; amd. Sec. 3, Ch. 531, L. 1989; amd. Sec. 3, Ch. 695, L. 1991; amd. Sec. 1, Ch. 700, L. 1991; amd. Sec. 3, Ch. 506, L. 1993; amd. Sec. 3, Ch. 397, L. 1995.

Cross-References

Assessment of property, 15-8-111.

Mines net proceeds tax, Title 15, ch. 23, part 5.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

15-6-132. Class two property — description — taxable percentage. (1) Class two property includes the annual gross proceeds of metal mines.

(2) Class two property is taxed at 3% of its annual gross proceeds, as defined in 15-23-801.

History: En. Sec. 2, Ch. 693, L. 1979; amd. Sec. 72, Ch. 11, Sp. L. June 1989.

Cross-References

Coal and metal mines — exemptions, 15-6-208.

Assessment of property, 15-8-111.

Coal gross proceeds tax, Title 15, ch. 23, part 7.

Metal mines gross proceeds tax, Title 15, ch. 23, part 8.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

15-6-133. Class three property — description — taxable percentage. (1) Class three property includes:

(a) agricultural land as defined in 15-7-202;

(b) nonproductive patented mining claims outside the limits of an incorporated city or town held by an owner for the ultimate purpose of developing the mineral interests on the property. For the purposes of this subsection (1)(b), the following provisions apply:

(i) The claim may not include any property that is used for residential purposes, recreational purposes as described in 70-16-301, or commercial purposes as defined in 15-1-101 or any property the surface of which is being used for other than mining purposes or has a separate and independent value for other purposes.

(ii) Improvements to the property that would not disqualify the parcel are taxed as otherwise provided in this title, including that portion of the land upon which the improvements are located and that is reasonably required for the use of the improvements.

(iii) Nonproductive patented mining claim property must be valued as if the land were devoted to agricultural grazing use.

(c) parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(1). The land may not be devoted to a commercial or industrial purpose.

(2) Class three property is taxed at the taxable percentage rate applicable to class four property, as provided in 15-6-134(2)(a).

(3) The land described in subsection (1)(c) is valued at the productive capacity value of grazing land, at the average grade of grazing land, and the taxable value is computed by multiplying the value by seven times the taxable rate for agricultural land.

History: En. Sec. 3, Ch. 693, L. 1979; amd. Sec. 1, Ch. 739, L. 1985; amd. Sec. 3, Ch. 773, L. 1991; amd. Sec. 1, Ch. 267, L. 1993; amd. Sec. 1, Ch. 627, L. 1993; amd. Sec. 4, Ch. 485, L. 1995.

Cross-References

Legislature to enact laws to enhance and develop agriculture, Art. XII, sec. 1, Mont. Const.
Definition of agricultural, 15-1-101.
Assessment of property, 15-8-111.
Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

15-6-134. Class four property — description — taxable percentage. (1) Class four property includes:

(a) subject to 15-6-201(1)(z) and (1)(aa) and subsections (1)(f) and (1)(g) of this section, all land, except that specifically included in another class;

(b) subject to 15-6-201(1)(z) and (1)(aa) and subsections (1)(f) and (1)(g) of this section, all improvements, including trailers, manufactured homes, or mobile homes used as a residence, except those specifically included in another class;

(c) the first $100,000 or less of the taxable market value of any improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of any person whose total income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than $15,000 for a single person or $20,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection (1)(c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both.

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least nine holes and not less than 700 lineal yards;

(e) subject to 15-6-201(1)(z), all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202, including 1 acre of real property beneath improvements on land described in 15-6-133(1)(c). The 1 acre must be valued at market value.

(f) (i) single-family residences, including trailers, manufactured homes, or mobile homes;

(ii) rental multifamily dwelling units;

(iii) appurtenant improvements to the residences or dwelling units, including the parcels of land upon which the residences and dwelling units are located and any leasehold improvements; and

(iv) vacant residential lots; and

(g) (i) commercial buildings and the parcels of land upon which they are situated; and

(ii) vacant commercial lots.

(2) Class four property is taxed as follows:

(a) (i) Except as provided in 15-24-1402, 15-24-1501, 15-24-1502, and subsection (2)(a)(ii) of this section, property described in subsections (1)(a), (1)(b), (1)(e), (1)(f), and (1)(g) of this section is taxed at 3.794% of its taxable market value in tax year 1999.

(ii) The taxable percentage rate in subsection (2)(a)(i) must be adjusted downward by subtracting 0.0835 percentage points each year until the tax rate is equal to or less than 3.46%.

(b) (i) Property qualifying under the property tax assistance program in subsection (1)(c) is taxed at the rate provided in subsection (2)(a)(ii) of its market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
$0 - $ 6,000	$0 - $8,000	20%
6,001 - 9,200	8,001 - 14,000	50%
9,201 - 15,000	14,001 - 20,000	70%

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1995; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a)(i).

(3) Within the meaning of comparable property, as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property.

History: En. Sec. 4, Ch. 693, L. 1979; amd. Sec. 3, Ch. 638, L. 1979; amd. Sec. 1, Ch. 599, L. 1981; amd. Sec. 59, Ch. 575, L. 1981; amd. Sec. 1, Ch. 564, L. 1981; amd. Sec. 1, Ch. 25, L. 1983; amd. Sec. 2, Ch. 632, L. 1983; amd. Sec. 1, Ch. 292, L. 1985; amd. Sec. 1, Ch. 663, L. 1985; amd. Sec. 2, Ch. 739, L. 1985; amd. Sec. 2, Ch. 743, L. 1985; amd. Sec. 1, Ch. 427, L. 1987; amd. Sec. 1, Ch. 575, L. 1987; amd. Sec. 1, Ch. 612, L. 1991; amd. Sec. 4, Ch. 773, L. 1991; amd. Sec. 6, Ch. 267, L. 1993; amd. Sec. 1, Ch. 562, L. 1993; amd. Sec. 1, Ch. 485, L. 1995; amd. Sec. 8, Ch. 574, L. 1995; amd. Sec. 7, Ch. 200, L. 1997; amd. Sec. 2, Ch. 463, L. 1997; amd. Sec. 1, Ch. 436, L. 1999; amd. Sec. 82, Ch. 584, L. 1999; amd. Sec. 2, Ch. 135, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 135 in (2)(a) inserted reference to 15-24-1502; and made minor changes in style. Amendment effective March 27, 2001.

Retroactive Applicability: Section 5, Ch. 135, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

Cross-References

Definition of improvements and mobile home, 15-1-101.
Certain disabled veterans' residences exempt, 15-6-211.
Effect of periodic revaluation, 15-7-103.
Assessment of property, 15-8-111.
Taxation of condominiums, 15-8-511, 15-8-512.
New industrial property tax prepayment, 15-16-201.
Reduction of tax on improvements destroyed by natural disaster, 15-16-611.
Payment of tax on mobile homes and housetrailers, Title 15, ch. 24, part 2.
Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.
Taxation of property subject to conservation easement, 76-6-208.

15-6-135. Class five property — description — taxable percentage. (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in 15-6-137(1)(a);

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

(e) all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development;

(f) machinery and equipment used in electrolytic reduction facilities;

(g) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telecommunications services exclusively to rural areas or to rural areas and cities and towns of 1,200 permanent residents or less.

(2) (a) "Air and water pollution control equipment" means that portion of identifiable property, facilities, machinery, devices, or equipment designed, constructed, under construction, or operated for removing, disposing, abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert, storing, or preventing the creation of air or water pollutants that, except for the use of the item, would be released to the environment. Reduction

in pollutants obtained through operational techniques without specific facilities, machinery, devices, or equipment is not eligible for certification under this section.

(b) Requests for certification must be made on forms available from the department of revenue. Certification may not be granted unless the applicant is in substantial compliance with all applicable rules, laws, orders, or permit conditions. Certification remains in effect only as long as substantial compliance continues.

(c) The department of environmental quality shall promulgate rules specifying procedures, including timeframes for certification application, and definitions necessary to identify air and water pollution control equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution control equipment. The department of environmental quality shall identify and track compliance in the use of certified air and water pollution control equipment and report continuous acts or patterns of noncompliance at a facility to the department of revenue. Casual or isolated incidents of noncompliance at a facility do not affect certification.

(d) A person may appeal the certification, classification, and valuation of the property to the state tax appeal board. Appeals on the property certification must name the department of environmental quality as the respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent.

(3) (a) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(b) New industrial property does not include:

(i) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);

(ii) a plant that will create adverse impact on existing state, county, or municipal services; or

(iii) property used or employed in an industrial plant that has been in operation in this state for 3 years or longer.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget;

(iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or

(v) earn 50% or more of their annual gross income from out-of-state sales.

(5) Class five property is taxed at 3% of its market value.

History: (1), (2)(a), (3) thru (6)En. Sec. 5, Ch. 693, L. 1979; amd. Sec. 4, Ch. 660, L. 1979; (2)(b)En. Sec. 1, Ch. 659, L. 1979; amd. Sec. 60, Ch. 575, L. 1981; amd. Sec. 36, Ch. 370, L. 1987; amd. Sec. 1, Ch. 519, L. 1987; amd. Sec. 1, Ch. 568, L. 1987; amd. Sec. 3, Ch. 659, L. 1987; amd. Sec. 1, Ch. 694, L. 1991; amd. Sec. 1, Ch. 510, L. 1993; amd. Sec. 39, Ch. 418, L. 1995; amd. Sec. 26, Ch. 51, L. 1999; amd. Sec. 32, Ch. 426, L. 1999.

Cross-References

Application for classification of property, 15-6-191.
Application for classification as new industrial property, 15-6-192.
Assessment of property, 15-8-111.
Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.
School district may impose additional prerequisites to qualify as new industrial property, 20-9-407.

Payment of taxes on motor vehicles, 61-3-303, 61-3-501.
Fee in lieu of tax imposed on motor homes, travel trailers, and campers, 61-3-521.

15-6-136. *(Temporary)* **Class six property — description — taxable percentage.** (1) Class six property includes:

(a) livestock that are not exempt under 15-6-201(1)(bb) and other species of domestic animals and wildlife raised in domestication or a captive environment, except for cats, dogs, and other household pets not raised for profit;

(b) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than $15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals when no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year;

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis; and

(c) machinery and equipment used in canola seed oil processing facilities if:

(i) the operators of those facilities employ a minimum of 15 full-time employees; and

(ii) a canola seed oil processing facility locates in the state of Montana after July 25, 1989; and

(d) machinery and equipment used in a malting barley facility.

(2) "Canola seed oil processing facility" means a facility that:

(a) extracts oil from canola seeds, refines the crude oil to produce edible oil, formulates and packages the edible oil into food products, or engages in any one or more of those processes; and

(b) employs at least 15 employees in a full-time capacity.

(3) "Malting barley facility" means a facility and integral machinery and equipment used principally to malt malting barley and includes machinery and equipment to mix, blend, transport, transfer, or process the barley and malt at the facility.

(4) Class six property is taxed at:

(a) 4% of its market value for tax years ending on or before December 31, 1999;

(b) 3% of its market value for tax year 2000;

(c) 2% of its market value for tax year 2001; and

(d) 1% of its market value for tax year 2002. *(Repealed effective January 1, 2003—secs. 27, 31, Ch. 285, L. 1999.)*

History: En. Sec. 6, Ch. 693, L. 1979; amd. Sec. 1, Ch. 330, L. 1981; amd. Sec. 5, Ch. 613, L. 1981; amd. Sec. 2, Ch. 599, L. 1983; amd. Sec. 2, Ch. 570, L. 1985; amd. Sec. 1, Ch. 660, L. 1987; amd. Sec. 1, Ch. 598, L. 1989; amd. Sec. 1, Ch. 648, L. 1989; amd. Sec. 2, Ch. 10, Sp. L. June 1989; amd. Sec. 5, Ch. 773, L. 1991; amd. Sec. 1, Ch. 409, L. 1997; amd. Sec. 1, Ch. 546, L. 1997; amd. Sec. 11, Ch. 285, L. 1999; amd. Sec. 1, Ch. 555, L. 1999; amd. Sec. 1, Ch. 11, Sp. L. May 2000.

Compiler's Comments

2000 Amendment: Chapter 11 in (1)(a) substituted reference to 15-6-201(1)(bb) for reference to 15-6-201(1)(cc). Amendment effective May 25, 2000, and terminates January 1, 2001, if Ch. 515, L. 1999, is approved by the electorate on November 7, 2000. The code commissioner did not terminate the amendment because the coordination instruction directing the termination was erroneous.

Applicability: Section 18(3), Ch. 11, Sp. L. May 2000, provided: "[Sections 1 through 5] [15-6-136, 15-6-138, 15-6-201, 15-7-111, and 15-8-111] apply to tax years beginning after December 31, 2001."

Cross-References

Legislature to enact laws to enhance and develop agriculture, Art. XII, sec. 1, Mont. Const.
Definition of agricultural and poultry, 15-1-101.
Assessment of property, 15-8-111.
Taxation of business inventories, Title 15, ch. 24, part 4.
Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

15-6-137. Class seven property — description — taxable percentage. (1) Class seven property includes:

(a) all property owned by cooperative rural electrical associations that serve less than 95% of the electricity consumers within the incorporated limits of a city or town, except rural electric cooperative properties described in 15-6-141(1)(a);

(b) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

(2) Class seven property is taxed at 8% of its market value.

History: En. Sec. 7, Ch. 693, L. 1979; amd. Sec. 2, Ch. 330, L. 1981; amd. Sec. 1, Ch. 352, L. 1981; amd. Sec. 61, Ch. 575, L. 1981; amd. Sec. 1, Ch. 576, L. 1989; amd. Sec. 4, Ch. 10, Sp. L. June 1989; amd. Sec. 32, Ch. 505, L. 1997; amd. Sec. 33, Ch. 426, L. 1999.

Cross-References

Assessment of property, 15-8-111.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

15-6-138. *(Temporary)* **Class eight property — description — taxable percentage.** (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-201(1)(bb);

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as providers as provided in 15-6-201, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(f) special mobile equipment as defined in 61-1-104;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 3% of its market value.

(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income, in the last full year for which data is available, is at least 2.85% from the prior year, then the tax rate for class eight property will be reduced by 1% each year until the tax rate reaches zero.

(b) The department shall calculate the percentage growth in subsection (5)(a) by using the formula (W/CPI) - 1, where:

(i) W is the Montana wage and salary income for the most current available year divided by the Montana wage and salary income for the year prior to the most current available year; and

(ii) CPI is the consumer price index for the most current available year used in subsection (5)(b)(i) divided by the consumer price index for the year prior to the most current available year as used in subsection (5)(b)(i).

(c) For purposes of determining the percentage growth in subsection (5)(a), the department shall use the wage and salary data series referred to as the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements. Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(6) The class eight property of a person or business entity that owns an aggregate of $5,000 or less in market value of class eight property is exempt from taxation. *(Repealed on occurrence of contingency—secs. 27(2), 31(4), Ch. 285, L. 1999.)*

History: En. Sec. 8, Ch. 693, L. 1979; amd. Sec. 62, Ch. 575, L. 1981; amd. Sec. 1, Ch. 278, L. 1983; amd. Sec. 1, Ch. 599, L. 1983; amd. Sec. 4, Ch. 516, L. 1985; amd. Sec. 3, Ch. 743, L. 1985; amd. Sec. 5, Ch. 453, L. 1987; amd. Sec. 1, Ch. 584, L. 1987; amd. Sec. 3, Ch. 611, L. 1987; amd. Sec. 2, Ch. 576, L. 1989; amd. Sec. 2, Ch. 598, L. 1989; amd. Sec. 5, Ch. 10, Sp. L. June 1989; amd. Sec. 1, Ch. 575, L. 1993; amd. Sec. 1, Ch. 570, L. 1995; amd. Sec. 2, Ch. 121, L. 1997; amd. Sec. 2, Ch. 496, L. 1997; amd. Sec. 12, Ch. 285, L. 1999; amd. Sec. 1, Ch. 551, L. 1999; amd. Sec. 2, Ch. 555, L. 1999; amd. Sec. 2, Ch. 11, Sp. L. May 2000; amd. Sec. 1, Ch. 438, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 438 in (1)(d) after "tools" substituted "except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as providers as provided in 15-6-201" for "that are not exempt under 15-6-201(1)(r) or (1)(bb)"; in (4) substituted "is taxed at 3% of its market value" for former language that read: "is taxed at:

(a) 6% of its market value for tax years beginning after December 31, 1997; and

(b) 3% of its market value for tax years beginning after December 31, 1999"; in (6) at beginning deleted "Beginning with tax year 2000"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 3, Ch. 438, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

2000 Amendment: Chapter 11 in two places substituted reference to 15-6-201(1)(bb) for reference to 15-6-201(1)(cc). Amendment effective May 25, 2000.

Applicability: Section 18(3), Ch. 11, Sp. L. May 2000, provided: "[Sections 1 through 5] [15-6-136, 15-6-138, 15-6-201, 15-7-111, and 15-8-111] apply to tax years beginning after December 31, 2001."

Repealer — Contingent Effective Date: Section 31(4), Ch. 285, L. 1999, provided: "[Sections 13(1)(aa) through (1)(ll) and 27(2) [repealing this section]] are effective if the tax rate in [section 12], amending 15-6-138, reaches zero."

Cross-References

Assessment of property, 15-8-111.

Prorated taxes on aircraft, 15-24-304.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

Fee imposed in lieu of tax on snowmobiles, 23-2-626.

Taxation of aircraft, 67-3-201.

15-6-139. Repealed. Sec. 11, Ch. 10, Sp. L. June 1989.

History: En. Sec. 9, Ch. 693, L. 1979; amd. Sec. 63, Ch. 575, L. 1981; amd. Sec. 9, Ch. 614, L. 1981; amd. Sec. 2, Ch. 278, L. 1983; amd. Sec. 3, Ch. 598, L. 1989.

15-6-140. Repealed. Sec. 11, Ch. 10, Sp. L. June 1989.

History: En. Sec. 10, Ch. 693, L. 1979; amd. Sec. 64, Ch. 575, L. 1981; amd. Sec. 10, Ch. 614, L. 1981; amd. Sec. 3, Ch. 278, L. 1983; amd. Sec. 3, Ch. 20, L. 1985; amd. Sec. 2, Ch. 584, L. 1987; amd. Sec. 4, Ch. 611, L. 1987; amd. Sec. 4, Ch. 598, L. 1989.

15-6-141. Class nine property — description — taxable percentage. (1) Class nine property includes:

(a) centrally assessed allocations of an electric power company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives. However, rural electric cooperatives' property used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property or serving an incorporated municipality with a population that is greater than 3,500 persons formerly served by a public utility that after January 1, 1998, received service from the facilities of an electric cooperative is included. For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility.

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electrical generation facilities included in class thirteen;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five;

(iii) property owned by organizations providing telephone communications to rural areas and classified in class five;

(iv) railroad transportation property included in class twelve;

(v) airline transportation property included in class twelve; and

(vi) telecommunications property included in class thirteen.

(2) Class nine property is taxed at 12% of market value.

History: En. Sec. 13, Ch. 686, L. 1979; amd. Sec. 1, Ch. 367, L. 1981; amd. Sec. 2, Ch. 478, L. 1981; amd. Sec. 1, Ch. 722, L. 1985; amd. Sec. 4, Ch. 743, L. 1985; amd. Sec. 3, Ch. 7, Sp. L. March 1986; amd. Sec. 6, Ch. 773, L. 1991; amd. Sec. 33, Ch. 505, L. 1997; amd. Sec. 34, Ch. 426, L. 1999; amd. Sec. 26, Ch. 556, L. 1999; amd. Sec. 17, Ch. 7, L. 2001; amd. Sec. 1, Ch. 406, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 7 near middle of (1)(a) substituted "electrical energy" for "electric energy"; and in (1)(c)(i) substituted "electrical generation facilities" for "electrical generation facility property". Amendment effective October 1, 2001.

Chapter 406 in (1)(a) in second sentence near end after "company also owns property" inserted reference to property serving incorporated municipality that received service from facilities of electric cooperative. Amendment effective April 28, 2001.

Cross-References

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

15-6-142. Repealed. Sec. 15, Ch. 773, L. 1991.

History: En. Sec. 4, Ch. 632, L. 1983; amd. Sec. 2, Ch. 663, L. 1985; amd. Sec. 3, Ch. 739, L. 1985; amd. Sec. 2, Ch. 427, L. 1987; amd. Sec. 2, Ch. 575, L. 1987; amd. Sec. 2, Ch. 612, L. 1991.

15-6-143. Class ten property — description — taxable percentage. (1) Class ten property includes all forest lands as defined in 15-44-102.

(2) Class ten property is taxed at 0.79% of its forest productivity value in tax year 1999, and the rate is reduced by 0.11% each year until the property is taxed at 0.35% of its forest productivity value.

History: En. Sec. 2, Ch. 681, L. 1985; amd. Sec. 16, Ch. 773, L. 1991; amd. Secs. 6, 7, Ch. 783, L. 1991; amd. Sec. 1, Ch. 297, L. 1997; amd. Sec. 83, Ch. 584, L. 1999.

Cross-References

Growing timber not agricultural use, 15-7-202.

15-6-144. Repealed. Sec. 9, Ch. 267, L. 1993.

History: En. Sec. 2, Ch. 699, L. 1985; amd. Sec. 2, Ch. 35, Sp. L. June 1986; amd. Sec. 7, Ch. 773, L. 1991.

15-6-145. Class twelve property — description — taxable percentage. (1) Class twelve property includes all property of a railroad car company as defined in 15-23-211, all railroad transportation property as described in the Railroad Revitalization and Regulatory Reform Act of 1976 as it read on January 1, 1986, and all airline transportation property as described in the Tax Equity and Fiscal Responsibility Act of 1982 as it read on January 1, 1986.

(2) For the tax year beginning January 1, 1991, and for each tax year thereafter, class twelve property is taxed at the percentage rate "R", to be determined by the department as provided in subsection (3), or 12%, whichever is less.

(3) R = A/B where:

(a) A is the total statewide taxable value of all commercial property, except class twelve property, as commercial property is described in 15-1-101(1)(d); and

(b) B is the total statewide market value of all commercial property, except class twelve property, as commercial property is described in 15-1-101(1)(d).

(4) (a) For the taxable year beginning January 1, 1986, and for every taxable year thereafter, the department shall conduct a sales assessment ratio study of all commercial and industrial real property and improvements. The study must be based on:

(i) assessments of such property as of January 1 of the year for which the study is being conducted; and

(ii) a statistically valid sample of sales using data from realty transfer certificates filed during the same taxable year or from the immediately preceding taxable year, but only if a sufficient number of certificates is unavailable from the current taxable year to provide a statistically valid sample.

(b) The department shall determine the value-weighted mean sales assessment ratio "M" for all such property and reduce the taxable value of property described in subsection (4) only, by multiplying the total statewide taxable value of property described in subsection (4)(a) by "M" prior to calculating "A" in subsection (3)(a).

(c) The adjustment referred to in subsection (4)(b) will be made beginning January 1, 1986, and in each subsequent tax year to equalize the railroad taxable values.

(5) For the purpose of complying with the Railroad Revitalization and Regulatory Reform Act of 1976, as it read on January 1, 1986, the rate "R" referred to in this section is the equalized average tax rate generally applicable to commercial and industrial property, except class twelve property, as commercial property is defined in 15-1-101(1)(d).

History: En. Sec. 5, Ch. 743, L. 1985; amd. Sec. 1, Ch. 7, Sp. L. March 1986; amd. Sec. 1, Ch. 24, Sp. L. June 1986; amd. Sec. 8, Ch. 773, L. 1991; amd. Sec. 1, Ch. 10, Sp. L. July 1992.

Cross-References

Assessment of property, 15-8-111.

Assessment of railroad properties, 15-23-205.

15-6-146. Repealed. Sec. 11, Ch. 10, Sp. L. June 1989.

History: En. Sec. 6, Ch. 743, L. 1985; amd. Sec. 2, Ch. 568, L. 1987; amd. Sec. 8, Ch. 578, L. 1987; amd. Sec. 1, Ch. 649, L. 1987; amd. Sec. 1, Ch. 59, L. 1989.

15-6-147. Repealed. Sec. 15, Ch. 773, L. 1991.

History: En. Sec. 2, Ch. 7, Sp. L. March 1986; amd. Sec. 1, Ch. 19, L. 1989.

15-6-148. Repealed. Sec. 15, Ch. 773, L. 1991.

History: En. Sec. 1, Ch. 34, Sp. L. June 1986.

15-6-149. Repealed. Sec. 15, Ch. 773, L. 1991.

History: En. Sec. 3, Ch. 35, Sp. L. June 1986.

15-6-150. Repealed. Sec. 15, Ch. 773, L. 1991.

History: En. Sec. 1, Ch. 618, L. 1987.

15-6-151. Renumbered 15-6-191 by Code Commissioner, 1999.

15-6-152. Renumbered 15-6-192 by Code Commissioner, 1999.

15-6-153. Repealed. Sec. 15, Ch. 773, L. 1991.

History: En. Sec. 2, Ch. 34, Sp. L. June 1986.

15-6-154. Repealed. Sec. 15, Ch. 773, L. 1991.

History: En. Sec. 4, Ch. 35, Sp. L. June 1986.

15-6-155. Repealed. Secs. 15, 18(2), Ch. 773, L. 1991.

History: En. Sec. 2, Ch. 618, L. 1987; amd. Sec. 9, Ch. 773, L. 1991.

15-6-156. Class thirteen property — description — taxable percentage. (1) Except as provided in subsections (2)(a) through (2)(g), class thirteen property includes:

(a) electrical generation facilities of a centrally assessed electric power company;

(b) electrical generation facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a;

(c) noncentrally assessed electrical generation facilities owned or operated by any electrical energy producer; and

(d) allocations of centrally assessed telecommunications services companies.

(2) Class thirteen property does not include:

(a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;

(b) property owned by cooperative rural electric cooperative associations classified under 15-6-137;

(c) allocations of electric power company property under 15-6-141;

(d) electrical generation facilities included in another class of property;

(e) property owned by cooperative rural telephone associations and classified in class five;

(f) property owned by organizations providing telecommunications services and classified in class five; and

(g) generation facilities that are exempt under 15-6-225.

(3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power. The term includes but is not limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(b) The term does not include electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes.

(c) The term also does not include a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and classified under 15-6-134 and 15-6-138.

(4) Class thirteen property is taxed at 6% of its market value.

History: En. Sec. 27, Ch. 556, L. 1999; amd. Sec. 34(2), Ch. 556, L. 1999; amd. Sec. 5, Ch. 591, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 591 in (1) in exception clause substituted reference to (2)(g) for reference to (2)(f); inserted (2)(g) concerning exempt generation facilities; and made minor changes in style. Amendment effective July 1, 2001.

15-6-157 through 15-6-190 reserved.

15-6-191. Application for certain class four classifications. (1) A person applying for classification of property under the property tax assistance program described in 15-6-134(1)(c) shall make an affidavit to the department of revenue, on a form provided by the department without cost, stating:

(a) the person's income;

(b) the fact that the person maintains the land and improvements as the person's primary residential dwelling, when applicable; and

(c) other information that is relevant to the applicant's eligibility.

(2) This application must be made before March 15 of the year after the applicant becomes eligible. The application remains in effect in subsequent years unless there is a change in the applicant's eligibility. The taxpayer shall inform the department of any change in eligibility. The department may inquire by mail whether any change in eligibility has taken place and may require a new statement of eligibility at any time that it considers necessary.

(3) The affidavit is sufficient if the applicant signs a statement affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department. This signed statement must be treated as a statement under oath or equivalent affirmation for the purposes of 45-7-202, relating to the criminal offense of false swearing.

History: En. Sec. 12, Ch. 693, L. 1979; amd. Sec. 1, Ch. 101, L. 1981; amd. Sec. 65, Ch. 575, L. 1981; amd. Sec. 3, Ch. 632, L. 1983; amd. Sec. 3, Ch. 663, L. 1985; amd. Sec. 9, Ch. 574, L. 1995; Sec. 15-6-151, MCA 1997; redes. 15-6-191 by Code Commissioner, 1999.

15-6-192. Application for classification as new industrial property. (1) Any person, firm, or other group seeking to qualify its property for classification as new industrial property under class five shall make application to the department of revenue on a form provided by the department.

(2) The department of revenue shall promulgate rules for the determination of what constitutes an adverse impact, taking into consideration the number of people to be employed and the size of the community in which the location of the industrial property is contemplated.

(3) If the department makes an initial determination that the industrial property qualifies as new industrial property under class five, it shall publish notice of and hold a public hearing to determine whether the property should retain this classification.

(4) Local taxing authority officials may waive their objections to the property's classification in class five if the owner of the new industrial property agrees to prepay property

taxes on the property during the construction period. The maximum amount of prepayment shall be the amount of tax the owner would have paid on the property if it had not been classified under class five.

(5) If a new industrial facility qualifies under class five, its property tax payment may not be reduced for reimbursement of its prepaid taxes as provided in 15-16-201 until the class five qualification expires.

History: En. Sec. 13, Ch. 693, L. 1979; Sec. 15-6-152, MCA 1997; redes. 15-6-192 by Code Commissioner, 1999.

Part 2
Tax-Exempt Property

Part Cross-References

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.
Suspension of property tax for persons in military service — application required, 10-1-606.
Injunction to prevent collection of tax on exempt property, 15-1-405.
Assessment of taxable improvements on tax-exempt land, 15-8-701.
Reduction of tax on improvements destroyed by natural disaster, 15-16-611.
Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.
Federal sums in lieu of taxes, Title 17, ch. 3, part 3.
Aircraft exempt from nonaircraft- or nonairport-related city tax levies, 67-3-201.
Exemption for property of conservation district, 76-15-404.
Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

15-6-201. *(Temporary)* **Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) the following percentage of the market value of residential property as described in 15-6-134(1)(e) and (1)(f):

(i) 23% for tax year 2000;

(ii) 27.5% for tax year 2001; and

(iii) 31% for tax year 2002 and succeeding tax years;

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):

(i) 9% for tax year 2000;

(ii) 11% for tax year 2001; and

(iii) 13% for tax year 2002 and succeeding tax years;

(bb) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

(cc) light vehicles as defined in 61-1-139; and

(dd) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after initial production of ethanol from the facility.

(2) (a) For the purposes of subsection (1)(e):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) For the purposes of subsection (1)(bb):

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure.

15-6-201. *(Effective January 1, 2003)* **Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) the following percentage of the market value of residential property as described in 15-6-134(1)(e) and (1)(f):

(i) 23% for tax year 2000;

(ii) 27.5% for tax year 2001; and

(iii) 31% for tax year 2002 and succeeding tax years;

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):

(i) 9% for tax year 2000;

(ii) 11% for tax year 2001; and

(iii) 13% for tax year 2002 and succeeding tax years;

(bb) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

(cc) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than $15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

(dd) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility; and

(ee) light vehicles as defined in 61-1-139.

(2) (a) For the purposes of subsection (1)(e):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) For the purposes of subsection (1)(bb):

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure.

15-6-201. *(Effective on occurrence of contingency)* **Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), “nonprofit corporation” means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) the following percentage of the market value of residential property as described in 15-6-134(1)(e) and (1)(f):

(i) 23% for tax year 2000;

(ii) 27.5% for tax year 2001; and

(iii) 31% for tax year 2002 and succeeding tax years;

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):

(i) 9% for tax year 2000;

(ii) 11% for tax year 2001; and

(iii) 13% for tax year 2002 and succeeding tax years;

(bb) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

(cc) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than $15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

(dd) all agricultural implements and equipment;

(ee) all mining machinery, fixtures, equipment, tools, and supplies except those included in class five;

(ff) all manufacturing machinery, fixtures, equipment, tools, and supplies except those included in class five;

(gg) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(hh) special mobile equipment as defined in 61-1-104;

(ii) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(jj) x-ray and medical and dental equipment;

(kk) citizens' band radios and mobile telephones;

(ll) radio and television broadcasting and transmitting equipment;

(mm) cable television systems;

(nn) coal and ore haulers;

(oo) theater projectors and sound equipment; and

(pp) light vehicles as defined in 61-1-139.

(2) (a) For the purposes of subsection (1)(e):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) For the purposes of subsection (1)(bb):

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure.

History: En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol. C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977; R.C.M. 1947, 84-202(1), (3), (8); amd. Sec. 1, Ch. 508, L. 1979; amd. Sec. 1, Ch. 616, L. 1979; amd. Sec. 1, Ch. 639, L. 1979; amd. Sec. 21, Ch. 712, L. 1979; amd. Sec. 1, Ch. 478, L. 1981; amd. Sec. 11, Ch. 614, L. 1981; amd. Sec. 1, Ch. 170, L. 1983; amd. Sec. 2, Ch. 323, L. 1983; amd. Sec. 1, Ch. 523, L. 1983; amd. Sec. 2, Ch. 463, L. 1985; amd. Sec. 5, Ch. 516, L. 1985; amd. Sec. 1, Ch. 455, L. 1987; amd. Sec. 1, Ch. 545, L. 1987; amd. Sec. 1, Ch. 556, L. 1987; amd. Sec. 5, Ch. 611, L. 1987; amd. Sec. 2, Ch. 649, L. 1987; amd. Sec. 2, Ch. 59, L. 1989; amd. Sec. 3, Ch. 576, L. 1989; amd. Sec. 1, Ch. 617, L. 1989; amd. Sec. 3, Ch. 713, L. 1989; amd. Sec. 1, Ch. 71, L. 1991; amd. Sec. 1, Ch. 123, L. 1991; amd. Sec. 1, Ch. 271, L. 1991; amd. Sec. 1, Ch. 467, L. 1991; amd. Sec. 9, Ch. 783, L. 1991; amd. Sec. 1, Ch. 54, L. 1993; amd. Sec. 1, Ch. 80, L. 1993; amd. Sec. 2, Ch. 575, L. 1993; amd. Sec. 1, Ch. 88, L. 1995; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 2, Ch. 257, L. 1995; amd. Sec. 40, Ch. 418, L. 1995; amd. Sec. 43, Ch. 546, L. 1995; amd. Sec. 1, Ch. 585, L. 1995; amd. Sec. 3, Ch. 121, L. 1997; amd. Sec. 13, Ch. 472, L. 1997; amd. Sec. 3, Ch. 496, L. 1997; amd. Sec. 13, Ch. 285, L. 1999; amd. Sec. 1, Ch. 438, L. 1999; amd. Sec. 5, Ch. 515, L. 1999; amd. Sec. 1, Ch. 539, L. 1999;

amd. Sec. 3, Ch. 555, L. 1999; amd. Sec. 84, Ch. 584, L. 1999; amd. Sec. 3, Ch. 11, Sp. L. May 2000; amd. Sec. 2, Ch. 438, L. 2001.

Compiler's Comments

2001 Amendment: (Temporary version) Chapter 438 deleted former (1)(z)(i) that read: "(i) 16% for tax year 1999"; deleted former (1)(aa)(i) that read: "(i) 6.5% for tax year 1999"; inserted (1)(dd) providing exemption for all manufacturing machinery, fixtures, equipment, and tools used during construction and for 10 years after initial ethanol production; and made minor changes in style. Amendment effective October 1, 2001.

(Version effective January 1, 2003) Deleted former (1)(z)(i) that read: "(i) 16% for tax year 1999"; deleted former (1)(aa)(i) that read: "(i) 6.5% for tax year 1999"; inserted (1)(dd) providing exemption for all manufacturing machinery, fixtures, equipment, and tools used in construction of and for 10 years after completion of ethanol manufacturing facility; and made minor changes in style.

(Version effective on occurrence of contingency) Deleted former (1)(z)(i) that read: "(i) 16% for tax year 1999"; deleted former (1)(aa)(i) that read: "(i) 6.5% for tax year 1999"; in (1)(ee) and (1)(ff) after "tools" deleted "that are not exempt under 15-6-201(1)(r)"; and made minor changes in style.

Applicability: Section 3, Ch. 438, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

2000 Amendment by Referendum: Chapter 515, L. 1999, in temporary version inserted (1)(cc), in 2003 version inserted (1)(dd), and in contingent version inserted (1)(pp) exempting light vehicles from taxation; and made minor changes in style. Amendment in temporary version effective November 7, 2000.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

2000 Amendment: Chapter 11 deleted former (1)(bb) that read: "(bb) the percentage of valuation of land calculated pursuant to 15-7-111(4)"; and made minor changes in style. Amendment effective May 25, 2000.

Applicability: Section 18(3), Ch. 11, Sp. L. May 2000, provided: "(Sections 1 through 5) (15-6-136, 15-6-138, 15-6-201, 15-7-111, and 15-8-111) apply to tax years beginning after December 31, 2001."

Contingent Effective Date: Section 31(4), Ch. 285, L. 1999, provided: "(Sections 13(1)(aa) through (1)(ll) (15-6-201(1)(aa) through (1)(ll), now 15-6-201(1)(dd) through (1)(nn)) and 27(2)) are effective if the tax rate in (section 12), amending 15-6-138, reaches zero."

Cross-References

Legislature to enact laws to enhance and develop agriculture, Art. XII, sec. 1, Mont. Const.
Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.
Taxation of state property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 12.
Privilege tax on gainful use of tax-exempt property, 15-24-1204 through 15-24-1206.
Federal sums in lieu of tax, Title 17, ch. 3, part 3.
Exemption of property in certain cities from county library tax, 22-1-313.
Exemption of cemetery association property, 35-20-217.
Motorcycle defined, 61-1-105.
Quadricycle defined, 61-1-133.
Property acquired by municipality for airport purposes exempt, 67-10-406.
Property acquired by airport authority for airport purposes exempt, 67-11-306.
State land equalization payments, Title 77, ch. 1, part 5.
Land purchased from state or irrigation district subject to taxation, 77-2-313.
Reversion of land purchased from state exempt, 77-2-314.
Exemption for irrigation district property, 85-7-2011.
Yellowstone River Compact does not subject United States property to taxation, 85-20-101.
Payments in lieu of taxes to county for land owned by Department of Fish, Wildlife, and Parks, 87-1-603.
Certain industrial development projects not exempt, 90-5-110.

15-6-202. Freeport merchandise and business inventories exemption. (1) Freeport merchandise and business inventories are exempt from taxation.

(2) "Freeport merchandise" means those stocks of merchandise manufactured or produced outside this state that are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state for storage in transit prior to shipment to a final destination outside the state and that have acquired a taxable situs within the state.

(3) Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, or repackaged.

(4) Any person or other group seeking to qualify its property for inclusion in the freeport merchandise class shall make application to the department of revenue in the manner or form as may be required by the department.

(5) "Business inventories" includes goods primarily intended for sale and not for lease in the ordinary course of business and raw materials and work in progress with respect to those goods. Business inventories do not include goods that are leased or rented.

History: En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol. C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977; R.C.M. 1947, 84-202(4); amd. Sec. 2, Ch. 613, L. 1981; amd. Sec. 3, Ch. 599, L. 1983; amd. Sec. 1, Ch. 99, L. 1995.

15-6-203. Veterans' clubhouse exemption — incompetent veterans' trusts. (1) A clubhouse or building erected by or belonging to any society or organization of honorably discharged United States military personnel that is used primarily for educational, fraternal, benevolent, or purely public charitable purposes rather than for gain or profit, together with the personal property necessarily used in the building, is exempt from taxation. The exemption provided for in this section applies even if a business, intended primarily for the use of the members, is required to be open to the public and is operated in a portion of the building.

(2) All property, real or personal, in the possession of legal guardians of incompetent veterans of U.S. military service or minor dependents of the veterans, when the property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, is exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in the minor's own right on account of removal of legal disability.

History: En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol. C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977; R.C.M. 1947, 84-202(2); amd. Sec. 1, Ch. 204, L. 1999.

Cross-References

Special considerations allowed service personnel and veterans, Art. II, sec. 35, Mont. Const.

15-6-204. Moneys and credits exemption. (1) Moneys and credits are exempt from taxation.

(2) Moneys and credits are hereby defined for the purpose of taxation as all moneys not constituting moneyed capital as hereinafter defined and all credits secured and unsecured, including all state, county, school district, and other municipal bonds, warrants, and securities, without any deduction or offset; provided, however, that credits as herein defined shall not embrace credits constituting moneyed capital as hereinafter defined or evidence of debt secured by mortgage of record upon real or personal property in the state of Montana.

History: (1)En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol. C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977; Sec. 84-202, R.C.M. 1947; (2)En. Sec. 1, Ch. 64, L. 1929; re-en. Sec. 2000.1, R.C.M. 1935; Sec. 84-303, R.C.M. 1947; R.C.M. 1947, 84-202(6), 84-303.

Cross-References

Definition of credit, 15-1-101.

Money capital and shares of banks exempt, 15-31-703.

Definition of school district, 20-15-403.

15-6-205. State water conservation projects exempt. All lands acquired and held by the department of natural resources and conservation or the state of Montana for use in connection with water conservation projects constructed or to be constructed under the laws of this state shall be exempt from taxation, and it shall be the duty of the county treasurer to cancel all taxes remaining unpaid against said land for the year in which same is so acquired and for all previous years, provided that such taxes shall be canceled only in such cases as no tax certificates shall have issued or a tax certificate has issued to the county and no assignment of such certificate of sale has been made by said county prior to the time when said land was acquired by said department.

History: En. Sec. 1, Ch. 114, L. 1937; R.C.M. 1947, 84-203.

15-6-206. Irrigation and drainage facilities — when exempt. (1) All irrigation and drainage facilities, including bonds, rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, and other property of like character shall be taxed as like facilities of the federal and state government; in cases where property taxes apply and where an increase in land value results, such facilities shall be taxed as such land is improved and such land shall be classified for tax purposes as the tax classification law provides.

(2) Sprinkler irrigation systems are exempt from taxation. Such systems include all pipes, hoses, rollers, spray attachments, connectors, pumps, and other items integral to the functioning of a sprinkler irrigation system installed and used on a farm or ranch but exclude underground water distribution lines and other elements of the system sufficiently affixed to land that they become real property.

History: (1)En. Sec. 1, Ch. 193, L. 1965; R.C.M. 1947, 84-206; (2)En. Sec. 1, Ch. 695, L. 1979; MCA 1981, 15-6-212(2); redes. 15-6-206(2) by Code Commissioner, 1983.

Cross-References

Legislature to enact laws to enhance and develop agriculture, Art. XII, sec. 1, Mont. Const.
Exemption for irrigation district property, 85-7-2011.

15-6-207. *(Temporary)* **Agricultural exemptions.** (1) The following agricultural products are exempt from taxation:

(a) all unprocessed agricultural products on the farm or in storage and owned by the producer;

(b) all producer-held grain in storage;

(c) all unprocessed agricultural products, except livestock;

(d) except as provided in subsection (1)(e), livestock that have not attained the age of 24 months as of February 1 or as of the last day of any month of the prior tax year if assessed on the average inventory basis as provided in 15-24-902(2);

(e) swine that have not attained the age of 6 months as of January 1;

(f) poultry and the unprocessed products of poultry; and

(g) bees and the unprocessed product of bees.

(2) Any beet digger, beet topper, beet defoliator, beet thinner, beet cultivator, beet planter, or beet top saver designed exclusively to plant, cultivate, and harvest sugar beets is exempt from taxation if the implement has not been used to plant, cultivate, or harvest sugar beets for the 2 years immediately preceding the current assessment date and there are no available sugar beet contracts in the sugar beet grower's marketing area.

15-6-207. *(Effective January 1, 2003)* **Agricultural exemptions.** (1) The following agricultural products are exempt from taxation:

(a) all unprocessed agricultural products on the farm or in storage and owned by the producer;

(b) all producer-held grain in storage;

(c) all unprocessed agricultural products;

(d) all livestock and the unprocessed products of livestock;

(e) poultry and the unprocessed products of poultry; and

(f) bees and the unprocessed product of bees.

(2) Any beet digger, beet topper, beet defoliator, beet thinner, beet cultivator, beet planter, or beet top saver designed exclusively to plant, cultivate, and harvest sugar beets is exempt from taxation if the implement has not been used to plant, cultivate, or harvest sugar beets for the 2 years immediately preceding the current assessment date and there are no available sugar beet contracts in the sugar beet grower's marketing area.

History: En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol. C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch.

112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977; R.C.M. 1947, 84-202(5); amd. Sec. 8, Ch. 663, L. 1979; amd. Sec. 3, Ch. 570, L. 1985; amd. Sec. 1, Ch. 627, L. 1985; amd. Sec. 2, Ch. 660, L. 1987; amd. Sec. 5, Ch. 598, L. 1989; amd. Sec. 38, Ch. 27, Sp. L. November 1993; amd. Sec. 5, Ch. 576, L. 1995; amd. Sec. 14, Ch. 285, L. 1999.

Cross-References

Legislature to enact laws to enhance and develop agriculture, Art. XII, sec. 1, Mont. Const.
Definition of agricultural, 15-1-101.

15-6-208. Mineral exemptions. (1) One-half of the contract sales price of coal sold by a coal producer who extracts less than 50,000 tons of coal in a calendar year is exempt from taxation.

(2) Metal mines producing less than 20,000 tons of ore in a taxable year are exempt from property taxation on one-half of the merchantable value.

(3) The first 1,000 tons of travertine and building stone extracted from a mine in a tax year are exempt from property taxation.

History: (1)En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol. C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977; Sec. 84-202, R.C.M. 1947; (2)En. 84-212 by Sec. 6, Ch. 498, L. 1977; Sec. 84-212, R.C.M. 1947; R.C.M. 1947, 84-202(7), 84-212; amd. Sec. 1, Ch. 303, L. 1983; amd. Sec. 7, Ch. 655, L. 1987; amd. Sec. 1, Ch. 89, L. 1993; amd. Sec. 1, Ch. 9, Sp. L. November 1993; amd. Sec. 28, Ch. 451, L. 1995.

Cross-References

Coal severance tax exemption, 15-35-103.

15-6-209. Community services buildings exempt. (1) The building and appurtenant land, not exceeding 3 acres, owned by a nonprofit community service organization is exempt from property taxation, except as provided in subsections (4) and (5), if the organization:

(a) is a lodge of a nationally recognized fraternal organization;

(b) (i) furnishes services to senior citizens in the form of daytime or evening educational or recreational activities that are recognized in the state plan on aging adopted by the department of public health and human services; and

(ii) does not furnish living accommodations to senior citizens; or

(c) primarily furnishes facilities without charge, except that a minimal fee may be charged for janitorial services, for public meetings and entertainments.

(2) An applicant for exemption under this section shall demonstrate that it has been an active community service organization continuously from January 1, 1981.

(3) A community service organization exempted under this section may sell food and beverages under license from the state.

(4) A building and land exempted under this section must be appraised, assessed, and subject to levies for any special improvement district if the special improvement directly benefits the building or land.

(5) The exemption provided under this section may not be extended to any property owned by a community service organization described in this section that is leased in whole or in part to any person for business or profitmaking purposes.

History: En. 84-202.1 by Sec. 1, Ch. 491, L. 1977; R.C.M. 1947, 84-202.1; amd. Sec. 1, Ch. 423, L. 1981; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 44, Ch. 546, L. 1995; amd. Sec. 1, Ch. 166, L. 1997.

15-6-210. Repealed. Sec. 12, Ch. 453, L. 1987.

History: En Sec. 1, Ch. 229, L. 1979.

15-6-211. Certain disabled or deceased veterans' residences exempt. (1) A residence, including the lot on which it is built, that is owned and occupied by a veteran or a veteran's spouse is exempt from property taxation if the veteran:

(a) was killed while on active duty or died as a result of a service-connected disability; or

(b) if living:

(i) was honorably discharged from active service in any branch of the armed services;

(ii) has been rated 100% disabled because of a service-connected disability by the United States department of veterans affairs or its successor; and

(iii) has an annual adjusted gross income, as reported on the latest federal income tax return, of not more than $30,000 for a single person and $36,000 for a married couple.

(2) The property tax exemption under this section remains in effect as long as the property is the primary residence owned and occupied by the veteran or, if the veteran is deceased, by the veteran's spouse and the spouse:

(a) is the owner and occupant of the house;

(b) has an annual adjusted gross income, as reported on the latest federal income tax return, of not more than $25,000;

(c) is unmarried; and

(d) has obtained from the United States department of veterans affairs a letter indicating that the veteran was 100% service-connected disabled at the time of death or that the veteran died while on active duty or as a result of a service-connected disability.

History: En. Sec. 11, Ch. 693, L. 1979; amd. Sec. 1, Ch. 590, L. 1981; amd. Sec. 1, Ch. 594, L. 1987; amd. Sec. 1, Ch. 301, L. 1997.

Cross-References

Special consideration allowed service personnel and veterans, Art. II, sec. 35, Mont. Const.

15-6-212. Repealed. Sec. 315, Ch. 42, L. 1997.

15-6-213. Down-hole equipment in oil and gas wells exempt. All down-hole equipment in oil and gas wells is exempt from taxation.

History: En. Sec. 2, Ch. 583, L. 1985.

Cross-References

Oil and gas machinery and equipment taxed as class eight, 15-6-138.

Right of entry to explore for oil and gas — exemption, 15-6-201.

15-6-214. Terminated. Sec. 3, Ch. 560, L. 1987.

History: En. Sec. 1, Ch. 560, L. 1987; amd. Sec. 7, Ch. 83, L. 1989.

15-6-215. Exemption for motion picture and television commercial property. Except as provided in 15-24-305 and 61-3-520, all property, including vehicles, brought into the state or otherwise used for the exclusive purpose of filming motion pictures or television commercials is exempt from property taxation and registration fees under 61-3-560 and 61-3-561, provided that the property does not remain in the state for a period in excess of 180 consecutive days in a calendar year.

History: En. Sec. 1, Ch. 525, L. 1989; amd. Sec. 6, Ch. 515, L. 1999.

Compiler's Comments

2000 Amendment by Referendum: Chapter 515, L. 1999, near end inserted "and registration fees under 61-3-560 and 61-3-561". Amendment effective November 7, 2000.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

Cross-References

Taxation of motion picture and television commercial property, 15-24-305.

Taxation of vehicles used exclusively in filming motion pictures or television commercials, 61-3-520.

15-6-216. Exemption of improvements made to commercial buildings to remove barriers to persons with disabilities. (1) Any additional value associated with specific improvements made to an existing or new commercial building, after December 31, 1995, for the purpose of removing barriers to the movement, safety, or comfort of a person with a disability may not increase the taxable valuation of the building.

(2) A person shall apply for an exemption under this section by March 1 of the tax year for which the exemption is sought, on a form provided by the department of revenue, setting forth the nature of the improvement, the date on which the improvement was completed, and any other information that the department may require.

(3) For the purposes of this section, improvements for the removal of barriers include:

(a) permanent ramps leading to entrances to the premises and between levels of the premises;

(b) elevators installed for the use of a person with a disability;

(c) handrails installed in and about the premises, indoors and outdoors;

(d) enlarged bathrooms and kitchens and any special equipment installed in them for the benefit of a person with a disability; and

(e) other reasonable accommodations made for the safety, convenience, and comfort of a person with a disability.

History: En. Sec. 1, Ch. 472, L. 1995.

15-6-217. Exemption for vehicle of certain health care professionals. A motor vehicle that is brought, driven, or coming into this state is exempt from the registration fees imposed in 15-24-301 if the motor vehicle is registered in another state or country by a nonresident person who is a licensed health care professional, as provided in Title 37, chapter 3, 5, 8, 11, 14, 20, 21, 25, 28, or 34, and who is employed in Montana by a rural health care facility that is located in an area that has been:

(1) designated by the secretary of the federal department of health and human services as a health professional shortage area, as provided in 42 U.S.C. 254(e); or

(2) determined to have a critical shortage of nurses, as provided in 42 U.S.C. 297n(a)(3).

History: En. Sec. 2, Ch. 246, L. 1999; amd. Sec. 1, Ch. 436, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 436 in introduction after "state" inserted "is exempt from the registration fees imposed in 15-24-301 if the motor vehicle" and at end substituted "located in an area that has been" for "located in a medically underserved area is exempt from taxation as provided in 15-24-301"; inserted (1) providing exemption if facility is located in area designated by secretary of federal department of health and human services as health professional shortage area; inserted (2) providing exemption if facility is located in area determined to have critical shortage of nurses; and made minor changes in style. Amendment effective October 1, 2001.

15-6-218. Intangible personal property exemption. (1) Except as provided in subsection (3), intangible personal property is exempt from taxation.

(2) For the purposes of this section, "intangible personal property" means personal property that is not tangible personal property and that:

(a) has no intrinsic value but is the representative or evidence of value, including but not limited to certificates of stock, bonds, promissory notes, licenses, copyrights, patents, trademarks, contracts, software, and franchises; or

(b) lacks physical existence, including but not limited to goodwill.

(3) The exemption for intangible personal property that is centrally assessed, other than property under 15-23-101(4) and (5), must be phased in over 3 years beginning in tax year 2000. Ten percent of the intangible personal property is exempt for tax year 2000, and two-thirds of the intangible personal property is exempt for tax year 2001. Centrally assessed intangible personal property is fully exempt from taxation in tax year 2002 and thereafter.

(4) The department shall adopt administrative rules prior to valuation determinations for tax year 2000 that specify the valuation methodology for centrally assessed intangible personal property. To the extent that the unit value includes intangible personal property, that value must be removed from the unit value according to the provisions in subsection (3).

(5) The department shall report intangible personal property annually to the revenue and transportation interim committee of the Montana legislature and to the Montana legislature meeting in the year 2001.

History: En. Sec. 1, Ch. 583, L. 1999.

15-6-219 reserved.

15-6-220. *(Effective January 1, 2003)* **Exemption for canola facilities and malting barley facilities.** (1) The following property is exempt from property taxation:

(a) machinery and equipment used in a canola seed oil processing facility; and

(b) machinery and equipment used in a malting barley facility.

(2) "Canola seed oil processing facility" means a facility that:

(a) extracts oil from canola seeds, refines the crude oil to produce edible oil, formulates and packages the edible oil into food products, or engages in any one or more of those processes; and

(b) employs at least 15 employees in a full-time capacity.

(3) "Malting barley facility" means a facility and integral machinery and equipment used principally to malt malting barley and includes machinery and equipment to mix, blend, transport, transfer, or process the barley and malt at the facility.

History: En. Sec. 2, Ch. 285, L. 1999.

15-6-221. Exemption for rental housing providing affordable housing to lower-income tenants. (1) That portion of residential rental property that is dedicated to providing affordable housing for lower-income persons is exempt from property taxation in any year that:

(a) the property is owned and operated by an entity, including but not limited to a limited partnership, limited liability corporation, or limited liability partnership in which a general partner is a nonprofit corporation exempt from taxation under section 26 U.S.C. 501(c)(3), as amended, and incorporated and admitted under the Montana Nonprofit Corporation Act as provided in Title 35, chapter 2, or is a housing authority created under 7-15-4402 and the nonprofit general partner actively participates in accordance with the definition found in 26 U.S.C. 469(i). Section 26 U.S.C. 469(i) is applicable without reference to section 26 U.S.C. 469(i)(6).

(b) the board of housing, established in 2-15-1814, has allocated low-income housing tax credits to the owner, under 26 U.S.C. 42, which requires that:

(i) at least 20% of the residential units in the property are rent-restricted, as defined in 26 U.S.C. 42, and rented to tenants whose household incomes do not exceed 50% of the median family income, adjusted for family size, for the county in which the property is located; or

(ii) at least 40% of the residential units in the property are rent-restricted, as defined in 26 U.S.C. 42, and rented to persons whose household incomes do not exceed 60% of the median income, adjusted for family size, for the county in which the property is located;

(c) a deed restriction or other legally binding instrument restricts the property's usage and provides that the units designated for use by lower-income households must be made available to or occupied by lower-income households for the period required to qualify for low-income housing tax credits at rents that do not exceed those prescribed by the terms of the deed restriction or other legally binding instruments;

(d) the property meets a public purpose in providing housing to an underserved population and provides a minimum of 50% of the units in the property to tenants at 50% of the median family income for the area, with rents restricted to a maximum of 30% of 50% of median family income, as calculated under 26 U.S.C. 42; and

(e) the owner's partnership or operating agreement or accompanying document provides that at the end of the compliance period, as that term is defined in 26 U.S.C. 42, the ownership of the property may be transferred to the nonprofit corporation or housing authority general partner as provided for in 26 U.S.C. 42(i)(7).

(2) Prior to the allocation of low-income housing tax credits to the owner, as provided in subsection (1)(b), the unit of local government where the proposed project is to be located shall give due notice, as defined in 76-15-103, and hold a public hearing to solicit comment on whether the proposed qualifying low-income rental housing property meets a community housing need. A record of the public hearing must be forwarded to the board of housing for consideration in granting the allocation of tax credits.

(3) For purposes of this section the following definitions apply:

(a) "Median family income" means the household income, adjusted for family size, determined annually by the United States department of housing and urban development, or its successor agency, to be the median family income for persons residing within each county of the state.

(b) A residential unit is "rent-restricted" if it satisfies the criteria of 26 U.S.C. 42(g)(2).

History: En. Sec. 1, Ch. 452, L. 1999.

15-6-222 through 15-6-224 reserved.

15-6-225. Energy equipment exemption. (1) (a) Except as provided in subsection (1)(b), the machinery and equipment used in qualifying generation facilities built and operated after July 1, 2001, are exempt from taxation.

(b) A generation facility that has a nameplate capacity of less than 1 megawatt of electrical energy is exempt from taxation for 5 years after the generation of electricity begins.

(2) (a) For the purposes of this section, "generation facility" includes any combination of a generator or generators, associated prime movers, and other associated machinery and equipment that are normally operated together to produce electric power, but does not include the owner's business improvements and personal property.

(b) To qualify for the exemption under this section, the generation facilities must be powered by an alternative renewable energy source, as defined in 90-4-102.

History: En. Sec. 6, Ch. 591, L. 2001.

Compiler's Comments

Effective Date: Section 29(1), Ch. 591, L. 2001, provided that this section is effective July 1, 2001.

Applicability: Section 30, Ch. 591, L. 2001, provided: "[Sections 6 through 12 and 14] [15-6-225, 15-24-1401, 15-31-124, 15-32-102, 15-32-109, 15-32-115, 15-32-201, and 15-32-402] apply to tax years beginning after December 31, 2001."

15-6-226. *(Temporary)* **Tax exemption for noncommercial electrical generation machinery and equipment.** (1) (a) Subject to the conditions of this section, noncommercial electrical generation machinery and equipment that are owned or leased by a person and that are used for the production of electrical energy for use by the person in the person's business are exempt from taxation.

(b) The exemption allowed by this section applies to electrical energy produced from electrical generation machinery and equipment owned or leased by a person if more than 80% of the electrical energy generated is used by the person in the person's business even if the person sells a portion of the electrical energy produced to another entity. However, the amount of the exemption is proportional to the ratio of kilowatt hours used by the person in the person's business to the total kilowatt hours produced.

(2) (a) For the purposes of this section, "electrical generation machinery and equipment" means any combination of a physically connected generator or generators, associated prime movers, and other associated machinery and equipment that has a generating capacity of less than 80 megawatts. The term is limited to electrical generation machinery and equipment that are powered by fossil fuels.

(b) The term does not include personal property used in the normal course of the person's business.

(3) For the purposes of controlling emissions of air pollutants, electrical generation machinery and equipment are, if applicable, subject to the provisions of 75-2-211 and 75-2-215. Before granting the exemption allowed by this section, the department shall obtain information from the department of environmental quality to ensure that the electrical generation machinery and equipment comply with the provisions of 75-2-211 and 75-2-215. *(Terminates December 31, 2004—sec. 5, Ch. 579, L. 2001.)*

History: En. Sec. 1, Ch. 579, L. 2001.

Compiler's Comments

Effective Date: Section 3, Ch. 579, L. 2001, provided that this section is effective on passage and approval. Approved May 5, 2001.

Retroactive Applicability: Section 4, Ch. 579, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

Termination: Section 5, Ch. 579, L. 2001, provided: "[This act] terminates December 31, 2004."

CHAPTER 7

APPRAISAL

Part 1 — General Methods

15-7-101. Classification and appraisal — duties of the department of revenue.
15-7-102. Notice of classification and appraisal to owners — appeals.
15-7-103. Classification and appraisal — general and uniform methods.
15-7-104. Work done under prior law.
15-7-105. Purpose.
15-7-106. Courses of instruction, examination, and certification — additional courses.

15-7-107. Certification required.
15-7-108. Land split.
15-7-109 and 15-7-110 reserved.
15-7-111. Periodic revaluation of certain taxable property.
15-7-112. Equalization of valuations.
15-7-113. Program exclusive.
15-7-114. Law supplemental.
15-7-115 through 15-7-120 reserved.
15-7-121. Repealed.
15-7-122. Repealed.
15-7-123 through 15-7-130 reserved.
15-7-131. Policy.
15-7-132. Repealed.
15-7-133. Repealed.
15-7-134. Extension of reappraisal cycle for class three land.
15-7-135 through 15-7-137 reserved.
15-7-138. Notice of classification and appraisal to single address for owners of undivided interest.

Part 2 — Agricultural Appraisal

15-7-201. Legislative intent — value of agricultural property.
15-7-202. Eligibility of land for valuation as agricultural.
15-7-203. Agricultural uses only considered in valuation.
15-7-204. Repealed.
15-7-205. Repealed.
15-7-206. Improvements on agricultural land.
15-7-207. Continuance of valuation as agricultural land.
15-7-208. Reclassification by department.
15-7-209. Reclassification by owner — lien.
15-7-210. Tax on change of use of part of tract.
15-7-211. Repealed.
15-7-212. Tract crossing county line — whole.
15-7-213. Repealed.
15-7-214. Repealed.
15-7-215. Repealed.
15-7-216. Repealed.
15-7-217 through 15-7-220 reserved.
15-7-221. Repealed.
15-7-222. Terminated.

Part 3 — Realty Transfer Act

15-7-301. Short title.
15-7-302. Purpose.
15-7-303. Definitions.
15-7-304. Report of transfers — change of ownership records.
15-7-305. Realty transfer certificate required.
15-7-306. Rules.
15-7-307. Certificate — exceptions.
15-7-308. Disclosure of information restricted — water right transfer certificate exception.
15-7-309. Classification or assessment methods.
15-7-310. Penalty.
15-7-311. Costs.

Part 4 — Appraisal of Residential Property in Areas of Changing Use

15-7-401. Purpose.
15-7-402. Application for residential appraisal of certain land and improvements.
15-7-403. Rollback tax — computation.

Chapter Cross-References

Taxation of condominium units, 15-8-511, 15-8-512.

Part 1

General Methods

Part Cross-References

Property tax administration, Art. VIII, sec. 3, Mont. Const.

Equal valuation, Art. VIII, sec. 4, Mont. Const.
Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

15-7-101. Classification and appraisal — duties of the department of revenue. (1) It is the duty of the department of revenue to accomplish the following:

(a) the classification of all taxable lands;

(b) the appraisal of all taxable city and town lots;

(c) the appraisal of all taxable rural and urban improvements.

(2) A record thereof must be kept upon such maps, plats, and forms and entered in such books of record as may be prescribed by the department. Such maps, plats, forms, and books of record shall be official records of the state. A certified copy of all such records as may be desired shall be furnished to the department.

(3) It shall be the duty of the department to maintain current the classification of all taxable lands and appraisal of city and town lots and rural and urban improvements, as provided for herein.

History: En. Sec. 1, Ch. 191, L. 1957; amd. Sec. 14, Ch. 405, L. 1973; amd. Sec. 1, Ch. 353, L. 1975; amd. Sec. 1, Ch. 123, L. 1977; R.C.M. 1947, 84-429.7(1).

Cross-References

Classifications of property subject to taxation, Title 15, ch. 6, part 1.
Taxation of property subject to conservation easement, 76-6-208.

15-7-102. Notice of classification and appraisal to owners — appeals. (1) (a) Except as provided in 15-7-138, the department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(i) change in ownership;

(ii) change in classification;

(iii) except as provided in subsection (1)(b), change in valuation; or

(iv) addition or subtraction of personal property affixed to the land.

(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an annual incremental change in valuation caused by the phasing in of a reappraisal under 15-7-111 or the application of the exemption under 15-6-201 or caused by an incremental change in the tax rate.

(c) The notice must include the following for the taxpayer's informational purposes:

(i) the total amount of mills levied against the property in the prior year; and

(ii) a statement that the notice is not a tax bill.

(d) Any misinformation provided in the information required by subsection (1)(c) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail the notice of classification and appraisal to a new owner or purchaser under contract for deed unless the department has received the transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed. The department shall notify the county tax appeal board of the date of the mailing.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for

that purpose, within 30 days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 30 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order.

History: En. Sec. 5, Ch. 191, L. 1957; amd. Sec. 17, Ch. 405, L. 1973; R.C.M. 1947, 84-429.11; amd. Sec. 3, Ch. 710, L. 1979; amd. Sec. 1, Ch. 105, L. 1983; amd. Sec. 11, Ch. 526, L. 1983; amd. Sec. 3, Ch. 29, Sp. L. June 1986; amd. Sec. 2, Ch. 613, L. 1987; amd. Sec. 1, Ch. 9, L. 1989; amd. Sec. 1, Ch. 636, L. 1989; amd. Secs. 1, 7, Ch. 680, L. 1991; amd. Sec. 2, Ch. 227, L. 1993; amd. Sec. 8, Ch. 594, L. 1993; amd. Sec. 39, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 30, L. 1995; amd. Sec. 10, Ch. 574, L. 1995; amd. Sec. 2, Ch. 414, L. 1997; amd. Sec. 3, Ch. 463, L. 1997; amd. Sec. 1, Ch. 56, L. 1999; amd. Sec. 85, Ch. 584, L. 1999; amd. Sec. 3, Ch. 444, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 444 in (1)(a) at beginning inserted exception clause; and made minor changes in style. Amendment effective April 30, 2001.

Retroactive Applicability: Section 7, Ch. 444, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

Cross-References

Notice of reclassification of property as nonagricultural, 15-7-208.

County Tax Appeal Boards to be in session until 60 days after mailing of notices, 15-15-101.

15-7-103. Classification and appraisal — general and uniform methods. (1) It is the duty of the department of revenue to implement the provisions of 15-7-101 through 15-7-103 by providing:

(a) for a general and uniform method of classifying lands in the state for the purpose of securing an equitable and uniform basis of assessment of lands for taxation purposes;

(b) for a general and uniform method of appraising city and town lots;

(c) for a general and uniform method of appraising rural and urban improvements;

(d) for a general and uniform method of appraising timberlands.

(2) All lands must be classified according to their use or uses and graded within each class according to soil and productive capacity. In the classification work, use must be made of soil surveys and maps and all other pertinent available information.

(3) All lands must be classified by parcels or subdivisions not exceeding 1 section each, by the sections, fractional sections, or lots of all tracts of land that have been sectionized by the United States government, or by metes and bounds, whichever yields a true description of the land.

(4) All agricultural lands must be classified and appraised as agricultural lands without regard to the best and highest value use of adjacent or neighboring lands.

(5) In any periodic revaluation of taxable property completed under the provisions of 15-7-111, all property classified in 15-6-134 must be appraised on the taxable portion of its market value in the same year. The department shall publish a rule specifying the year used in the appraisal.

(6) All sewage disposal systems and domestic use water supply systems of all dwellings may not be appraised, assessed, and taxed separately from the land, house, or other improvements in which they are located. In no event may the sewage disposal or domestic water supply systems be included twice by including them in the valuation and assessing them separately.

History: En. Sec. 6, Ch. 191, L. 1957; amd. Sec. 3, Ch. 512, L. 1973; amd. Sec. 5, Ch. 516, L. 1973; R.C.M. 1947, 84-429.12; amd. Sec. 1, Ch. 710, L. 1979; amd. Sec. 1, Ch. 32, L. 1983; amd. Sec. 4, Ch. 20, L. 1985; (6)En. Sec. 1, Ch. 583, L. 1985; amd. Sec. 3, Ch. 613, L. 1987; amd. Sec. 86, Ch. 584, L. 1999.

Cross-References

Sewage disposal systems and domestic water supply systems taxed as class four property, 15-6-134.

15-7-104. Work done under prior law. Any and all work performed or caused to be performed by the boards of county commissioners of the various counties for the classification of lands and appraisal of city and town lots and rural and urban improvements under the provisions of Chapter 198, Laws of 1955, is hereby declared to be valid and of the same effect as if performed under the provisions of present law.

History: En. Sec. 7, Ch. 191, L. 1957; R.C.M. 1947, 84-429.13.

15-7-105. Purpose. In order to produce more uniform appraisal of property throughout the state by encouraging technical training in the principles, methods, and techniques of appraising property and promoting a higher level of professionalism among appraisers, the legislature hereby establishes a system of instruction, examination, and certification for all appraisers.

History: En. Sec. 1, Ch. 602, L. 1979.

15-7-106. Courses of instruction, examination, and certification — additional courses. (1) The department shall offer courses in the principles, methods, and techniques of appraising for property tax purposes property in three fields:

(a) residential property;

(b) agricultural land; and

(c) commercial and industrial property.

(2) The department shall conduct an examination for those who have completed a course of instruction in any of the three fields listed in subsection (1).

(3) A person may not take the examination for appraising commercial and industrial property unless the person holds a certificate in appraising residential property.

(4) The department may schedule and conduct other courses within the state for appraisers, assessors, and department personnel for training in the following subjects:

(a) personal property assessment;

(b) property tax administration; and

(c) personnel management, fiscal management, public relations, professional ethics, and related management principles.

(5) The department shall issue a certificate to each appraiser, assessor, or other person successfully completing a course of instruction and passing an examination in any of the fields provided for in subsection (1) or any subject provided for in subsection (4).

History: En. Sec. 2, Ch. 602, L. 1979; amd. Sec. 40, Ch. 27, Sp. L. November 1993.

15-7-107. Certification required. (1) An appraiser employed by the department to appraise:

(a) residential property shall obtain a certificate in appraising residential property;

(b) agricultural land shall obtain a certificate in appraising agricultural land; and

(c) commercial and industrial property shall obtain a certificate in appraising commercial and industrial property.

(2) The department may promulgate rules requiring appraisers to complete continuing education courses in laws, rules, and methods relating to appraisal.

History: En. Sec. 3, Ch. 602, L. 1979; amd. Sec. 41, Ch. 27, Sp. L. November 1993.

15-7-108. Land split. For the purposes of this title, a land split is the conveyance or transfer of a portion of a parcel of land that will require the department to change its ownerships records for the original parcel to show the creation of one or more new parcels under a new ownership.

History: En. Sec. 1, Ch. 414, L. 1997.

15-7-109 and 15-7-110 reserved.

15-7-111. Periodic revaluation of certain taxable property. (1) The department shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. All other property must be revalued annually. The revaluation of class three, four, and ten property is complete on December 31, 1996. The amount of the change in valuation from the 1996 base year for each property in classes three, four, and ten must be phased in each year at the rate of 25% of the change in valuation from December 31, 1998, to the appropriate percentage of taxable market value for each class.

(2) The department shall value and phase in the value of newly constructed, remodeled, or reclassified property in a manner consistent with the valuation within the same class and the values established pursuant to subsection (1). The department shall adopt rules for determining the assessed valuation and phased-in value of new, remodeled, or reclassified property within the same class.

(3) Beginning January 1, 2001, the department of revenue shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all class three, four, and ten property in each county is revalued by January 1, 2003, and each succeeding 6 years. The resulting valuation changes must be phased in for each year until the next reappraisal. If a percentage of change for each year is not established, then the percentage of phasein for each year is 16.66%. The department shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners of each county.

History: En. 84-429.14 by Sec. 1, Ch. 294, L. 1975; R.C.M. 1947, 84-429.14; amd. Sec. 1, Ch. 596, L. 1987; amd. Sec. 4, Ch. 613, L. 1987; amd. Sec. 2, Ch. 636, L. 1989; amd. Secs. 2, 8, Ch. 680, L. 1991; amd. Sec. 4, Ch. 13, Sp. L. July 1992; amd. Sec. 4, Ch. 463, L. 1997; amd. Sec. 87, Ch. 584, L. 1999; amd. Sec. 4, Ch. 11, Sp. L. May 2000.

Compiler's Comments

2000 Amendment: Chapter 11 deleted former (4) and (5) that read: "(4) (a) If the value of an individual property is equal to or less than 75% of the appraised value of the improvements situated on the land, then the assessed value of the land is the land's appraised value as phased in under subsection (1) and the other provisions of subsection (1) do not apply.

(b) Subject to subsection (4)(c), if the value of an individual property is greater than 75% of the appraised value of the improvements situated on the land, then the value of the land must be determined as follows:

(i) the department shall calculate the average value of improvements in the state;

(ii) if the value of the improvements on an individual property is greater than the state average value of improvements, then the land is valued at 75% of the appraised value of the improvements situated on the land and the remainder of the land value is exempt from taxation; and

(iii) if the value of the improvements on an individual property is less than or equal to the state average value of improvements, then the land is valued at 75% of the appraised value of the improvements situated on the land and the remainder of the land value is exempt from taxation.

(c) The value of land upon which improvements are situated may not exceed the phased-in value of the land.

(5) For purposes of subsection (4), the following definitions apply:

(a) "average value of improvements" means the statewide arithmetic mean of the appraised value of all improvements that have a market value in excess of $7,500;

(b) "improvements" means residential dwellings and includes housetrailers, mobile homes, and manufactured homes;

(c) "land" includes contiguous parcels or lots under single ownership up to 5 acres"; and made minor changes in style. Amendment effective May 25, 2000.

Applicability: Section 18(3), Ch. 11, Sp. L. May 2000, provided: "[Sections 1 through 5] [15-6-136, 15-6-138, 15-6-201, 15-7-111, and 15-8-111] apply to tax years beginning after December 31, 2001."

Cross-References

Revaluation as prerequisite to adjustment of timberland tax formula, 15-6-143.
Reclassification of agricultural land not same as revaluation, 15-7-202.
Effect on market value standard, 15-8-111.

15-7-112. Equalization of valuations. The same method of appraisal and assessment shall be used in each county of the state to the end that comparable property with similar true market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program hereinbefore provided.

History: En. 84-429.15 by Sec. 2, Ch. 294, L. 1975; R.C.M. 1947, 84-429.15.

15-7-113. Program exclusive. No program for the revaluation of property shall be implemented for taxation in any county other than as prescribed in 15-7-111 through 15-7-114.

History: En. 84-429.16 by Sec. 3, Ch. 294, L. 1975; R.C.M. 1947, 84-429.16.

15-7-114. Law supplemental. Sections 15-7-111 through 15-7-114 are intended to be supplementary to and are not intended to repeal 15-7-103.

History: En. 84-429.17 by Sec. 4, Ch. 294, L. 1975; R.C.M. 1947, 84-429.17.

15-7-115 through 15-7-120 reserved.

15-7-121. Repealed. Sec. 27, Ch. 693, L. 1979.

History: En. 84-309 by Sec. 72, Ch. 566, L. 1977; R.C.M. 1947, 84-309.

15-7-122. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. 84-310 by Sec. 73, Ch. 566, L. 1977; R.C.M. 1947, 84-310.

15-7-123 through 15-7-130 reserved.

15-7-131. Policy. It is the policy of the state of Montana to provide for equitable assessment of taxable property in the state and to provide for periodic revaluation of taxable property in a manner that is fair to all taxpayers.

History: En. Sec. 1, Ch. 13, L. 1989.

15-7-132. Repealed. Sec. 10, Ch. 680, L. 1991.

History: En. Sec. 2, Ch. 13, L. 1989; amd. Sec. 5, Ch. 13, Sp. L. July 1992.

15-7-133. Repealed. Sec. 10, Ch. 680, L. 1991.

History: En. Sec. 3, Ch. 13, L. 1989; amd. Sec. 6, Ch. 13, Sp. L. July 1992.

15-7-134. Extension of reappraisal cycle for class three land. Notwithstanding any other provisions of this code, the reappraisal cycle for class three land commencing January 1, 1986, must be extended to December 31, 1993. The new values determined during this period must be placed on the tax rolls in the year immediately following the completion of the revaluation cycle for class three land.

History: En. Sec. 7, Ch. 13, Sp. L. July 1992.

15-7-135 through 15-7-137 reserved.

15-7-138. Notice of classification and appraisal to single address for owners of undivided interest. (1) (a) Subject to subsection (2), in the case of multiple, undivided interests in a parcel of land, the department shall send the notice of classification and appraisal required by 15-7-102 to a single owner of the land, as provided in this section.

(b) Except as provided in subsection (1)(c), the owners of the land shall provide to the department the name and address of the owner to whom the notice is to be sent and shall notify the department of a change in name or address. If an address is not provided, then the department shall send the notice to the address to which previous notices were sent.

(c) In the case of multiple, undivided interests in a parcel of land created after April 30, 2001, the department shall send the notice to the name and address shown on the recorded document creating the multiple, undivided interests in the land. If more than one name and address is shown on the document, the department shall send the notice to the first name and address shown on the document.

(2) A copy of the notice must be sent to other persons upon request of an owner of the land. If a parcel of land is located within the boundaries of a federally recognized Indian reservation,

each individual fee patent, even when it is an undivided interest, will be treated as a separate assessment and receive a separate notice of classification and appraisal.

History: **En. Sec. 1, Ch. 444, L. 2001.**

Compiler's Comments

Effective Date: Section 6, Ch. 444, L. 2001, provided that this section is effective on passage and approval. Approved April 30, 2001.

Retroactive Applicability: Section 7, Ch. 444, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

Part 2

Agricultural Appraisal

Part Cross-References

Legislature to enact laws to enhance and develop agriculture, Art. XII, sec. 1, Mont. Const.
Classification and taxable percentage of agricultural land, 15-6-133.
Assessment of agricultural land, 15-8-111.

15-7-201. Legislative intent — value of agricultural property. (1) Because the market value of many agricultural properties is based upon speculative purchases that do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land must be classified according to its use, which classifications include but are not limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land must be subclassified by production categories. Production categories are determined from the productive capacity of the land based on yield.

(4) In computing the agricultural land valuation schedules to take effect on the date when each revaluation cycle takes effect pursuant to 15-7-111, the department of revenue shall determine the productive capacity value of all agricultural lands using the formula $V = I/R$ where:

(a) V is the per-acre productive capacity value of agricultural land in each land use and production category;

(b) I is the per-acre net income of agricultural land in each land use and production category and is to be determined as provided in subsection (5); and

(c) R is the capitalization rate and, unless the advisory committee recommends a different rate and the department adopts the recommended capitalization rate by rule, is equal to 6.4%. This capitalization rate must remain in effect until the next revaluation cycle.

(5) (a) Net income must be determined separately in each land use based on production categories.

(b) Net income must be based on commodity price data, which may include grazing fees, crop and livestock share arrangements, cost of production data, and water cost data for the base period using the best available data.

(i) Commodity price data and cost of production data for the base period must be obtained from the Montana Agricultural Statistics, the Montana crop and livestock reporting service, and other sources of publicly available information if considered appropriate by the advisory committee.

(ii) Crop share and livestock share arrangements are based on typical agricultural business practices and average landowner costs.

(iii) Allowable water costs consist only of the per-acre labor costs, energy costs of irrigation, and, unless the advisory committee recommends otherwise and the department adopts the recommended cost by rule, a base water cost of $5.50 for each acre of irrigated land. Total allowable water costs may not exceed $40 for each acre of irrigated land. Labor and energy costs must be determined as follows:

(A) Labor costs are zero for pivot sprinkler irrigation systems; $4.50 an acre for tow lines, side roll, and lateral sprinkler irrigation systems; and $9 an acre for hand-moved and flood irrigation systems.

(B) Energy costs must be based on per-acre energy costs incurred in the energy cost base year, which is the calendar year immediately preceding the year specified by the department in

15-7-103(5). By July 1 of the year following the energy cost base year, an owner of irrigated land shall provide the department, on a form prescribed by the department, with energy costs incurred in that energy cost base year. In the event that no energy costs were incurred in the energy cost base year, the owner of irrigated land shall provide the department with energy costs from the most recent year available. The department shall adjust the most recent year's energy costs to reflect costs in the energy cost base year.

(c) The base crop for valuation of irrigated land is alfalfa hay, adjusted to 80% of sales price, and the base crop for valuation of nonirrigated land is wheat. The base unit for valuation of grazing lands is animal unit months (AUM), defined as the average monthly requirement of pasture forage to support a 1,000-pound cow with a calf or its equivalent.

(d) Unless the advisory committee recommends a different base period and the department adopts the recommended base period by rule, the base period used to determine net income must be the most recent 7 years for which data is available prior to the date the revaluation cycle ends. Unless the advisory committee recommends a different averaging method and the department adopts the recommended averaging method by rule, data referred to in subsection (5)(b) must be averaged, but the average must exclude the lowest and highest yearly data in the period.

(6) The department shall compile data and develop valuation manuals adopted by rule to implement the valuation method established by subsections (4) and (5).

(7) The governor shall appoint an advisory committee of persons knowledgeable in agriculture and agricultural economics. The advisory committee shall include one member of the Montana state university-Bozeman, college of agriculture, staff. The advisory committee shall:

(a) compile and review data required by subsections (4) and (5);

(b) recommend to the department any adjustments to data or to landowners' share percentages if required by changes in government agricultural programs, market conditions, or prevailing agricultural practices;

(c) recommend appropriate base periods and averaging methods to the department;

(d) evaluate the appropriateness of the capitalization rate and recommend a rate to the department;

(e) verify for each class of land that the income determined in subsection (5) reasonably approximates that which the average Montana farmer or rancher could have attained; and

(f) recommend agricultural land valuation schedules to the department. With respect to irrigated land, the recommended value of irrigated land may not be below the value that the land would have if it were not irrigated.

History: En. Sec. 1, Ch. 512, L. 1973; R.C.M. 1947, 84-437.1; amd. Sec. 1, Ch. 644, L. 1983; amd. Sec. 1, Ch. 681, L. 1985; amd. Sec. 1, Ch. 705, L. 1985; amd. Sec. 1, Ch. 172, L. 1991; amd. Sec. 3, Ch. 680, L. 1991; amd. Sec. 2, Ch. 267, L. 1993; amd. Secs. 1, 2, Ch. 563, L. 1995; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 1, Ch. 459, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 459 in (4)(c) in first clause after "rate and" inserted "unless the advisory committee recommends a different rate and the department adopts the recommended capitalization rate by rule" and at end of first full sentence substituted "the next revaluation cycle" for "new agricultural land valuation schedules are adopted by the department, after considering the recommendations from the advisory committee as provided in subsection (7)"; in (5)(b) near middle substituted "which may include grazing fees, crop and livestock share arrangements, cost of production data" for "grazing fees, crop share arrangements" and at end substituted "using the best available data" for "as follows"; in (5)(b)(i) near beginning substituted "and cost of production data" for "and grazing fees" and at end inserted "and other sources of publicly available information if considered appropriate by the advisory committee"; in (5)(b)(ii) near beginning after "Crop share" inserted "and livestock share" and near middle substituted "typical agricultural business practices" for "the rental value of the land"; in (5)(b)(iii) near middle of first sentence inserted "unless the advisory committee recommends otherwise and the department adopts the recommended cost by rule" and in second sentence increased costs to $40 per acre from $30 per acre; in (5)(c) in second sentence at end substituted "animal unit months (AUM), defined as the average monthly requirement of pasture forage to support a 1,000-pound cow with a calf or its equivalent" for "the average grazing fee for a 1,000-pound animal"; in (5)(d) at beginning of first sentence inserted "Unless the advisory committee recommends a different base period and the department adopts the recommended base period by rule" and at beginning of second sentence substituted "Unless the advisory committee recommends a different averaging method and the department adopts the recommended averaging method by rule, data" for "Commodity price data and grazing fees", near middle after "averaged" deleted "for the 7-year period", and near end substituted "yearly data" for "commodity prices or grazing fees"; in (7) at end of first sentence deleted "to compile and review the data required by subsections (4) and (5)"; inserted (7)(a) through (7)(e) concerning advisory committee compiling data, recommending adjustments to share percentages, recommending base periods, evaluating capitalization rate, and verifying income; in (7)(f) in first full sentence before "value" inserted "recommended"; and made minor changes in style. Amendment effective October 1, 2001.

15-7-202. Eligibility of land for valuation as agricultural. (1) (a) Contiguous parcels of land totaling 160 acres or more under one ownership are eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a residential, commercial, or industrial use.

(b) (i) Contiguous parcels of land of 20 acres or more but less than 160 acres under one ownership are eligible for valuation, assessment, and taxation as agricultural land if the land is used primarily for raising and marketing, as defined in subsection (1)(c), products that meet the definition of agricultural in 15-1-101. A parcel of land is presumed to be used primarily for raising agricultural products if the owner or the owner's immediate family members, agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of agricultural products produced by the land. The owner of land that is not presumed to be agricultural land shall verify to the department that the land is used primarily for raising and marketing agricultural products.

(ii) Noncontiguous parcels of land that meet the income requirement of subsection (1)(b)(i) are eligible for valuation, assessment, and taxation as agricultural land under subsection (1)(b)(i) if:

(A) the land is an integral part of a bona fide agricultural operation undertaken by the persons set forth in subsection (1)(b)(i) as defined in this section; and

(B) the land is not devoted to a residential, commercial, or industrial use.

(c) For the purposes of this subsection (1):

(i) "marketing" means the selling of agricultural products produced by the land and includes but is not limited to:

(A) rental or lease of the land as long as the land is actively used for grazing livestock or for other agricultural purposes; and

(B) rental payments made under the federal conservation reserve program or a successor to that program;

(ii) land that is devoted to residential use or that is used for agricultural buildings and is included in or is contiguous to land under the same ownership that is classified as agricultural land, other than land described in 15-6-133(1)(c), must be classified as agricultural land, and the land must be valued as provided in 15-7-206.

(2) Contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural each year that the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101; or

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent, intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(3) Parcels that do not meet the qualifications set out in subsections (1) and (2) may not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(4) Land may not be classified or valued as agricultural if it is subdivided land with stated restrictions effectively prohibiting its use for agricultural purposes. For the purposes of this subsection only, "subdivided land" includes parcels of land larger than 20 acres that have been subdivided for commercial or residential purposes.

(5) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation.

(6) The department may not classify land less than 160 acres as agricultural unless the owner has applied to have land classified as agricultural land. Land of 20 acres or more but less than 160 acres for which no application for agricultural classification has been made is taxed as

provided in 15-6-133(1)(c). If land has been valued, assessed, and taxed as agricultural land in any year, it must continue to be valued, assessed, and taxed as agricultural until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.

(7) For the purposes of this part, growing timber is not an agricultural use.

History: En. Sec. 4, Ch. 512, L. 1973; amd. Sec. 2, Ch. 56, L. 1974; amd. Sec. 1, Ch. 457, L. 1975; R.C.M. 1947, 84-437.2; amd. Sec. 1, Ch. 608, L. 1979; amd. Sec. 16, Ch. 693, L. 1979; amd. Sec. 4, Ch. 681, L. 1985; amd. Sec. 1, Ch. 699, L. 1985; amd. Sec. 1, Ch. 35, Sp. L. June 1986; amd. Sec. 1, Ch. 590, L. 1991; amd. Sec. 2, Ch. 705, L. 1991; amd. Sec. 16, Ch. 773, L. 1991; amd. Sec. 3, Ch. 627, L. 1993; amd. Sec. 1, Ch. 474, L. 1995; amd. Sec. 2, Ch. 485, L. 1995.

Cross-References

Definition of agricultural and poultry, 15-1-101.
Timberland — class ten property, 15-6-143.
Montana Subdivision and Platting Act, Title 76, ch. 3.

15-7-203. Agricultural uses only considered in valuation. In valuing land as agricultural, the department of revenue shall consider only those indicia of value which such land has for agricultural use.

History: En. Sec. 5, Ch. 512, L. 1973; amd. Sec. 3, Ch. 56, L. 1974; R.C.M. 1947, 84-437.3.

15-7-204. Repealed. Sec. 6, Ch. 201, L. 1981.

History: En. Sec. 6, Ch. 512, L. 1973; R.C.M. 1947, 84-437.4.

15-7-205. Repealed. Sec. 6, Ch. 201, L. 1981.

History: En. Sec. 7, Ch. 512, L. 1973; amd. Sec. 4, Ch. 126, L. 1977; R.C.M. 1947, 84-437.5.

15-7-206. Improvements on agricultural land. (1) In determining the total area of land actively devoted to agricultural use, there is included the area of all land under barns, sheds, silos, cribs, greenhouses, and like structures, lakes, dams, ponds, streams, irrigation ditches, and like facilities.

(2) One acre of land beneath agricultural improvements on agricultural land, as described in 15-7-202(1)(c)(ii), is valued at the class with the highest productive value and production capacity of agricultural land.

History: En. Sec. 8, Ch. 512, L. 1973; amd. Sec. 2, Ch. 457, L. 1975; R.C.M. 1947, 84-437.6; amd. Sec. 3, Ch. 485, L. 1995.

15-7-207. Continuance of valuation as agricultural land. Continuance of valuation, assessment, and taxation under this part shall depend upon continuance of the land in agricultural use and compliance with the other requirements of this part and not upon continuance in the same owner of title to the land.

History: En. Sec. 10, Ch. 512, L. 1973; R.C.M. 1947, 84-437.8; amd. Sec. 3, Ch. 201, L. 1981.

15-7-208. Reclassification by department. The department may reclassify land as nonagricultural upon giving due notice to the property owner or any purchaser under contract for deed under the provisions of 15-7-102. Upon notice of a change in classification of land from agricultural to another use, the property owner may petition the department to reclassify the land as agricultural by completing a form prescribed by the department and by producing whatever information is necessary to prove that the subject land meets the definition of agricultural land embodied in 15-7-202.

History: En. 84-437.15 by Sec. 4, Ch. 56, L. 1974; R.C.M. 1947, 84-437.15; amd. Sec. 12, Ch. 526, L. 1983; amd. Sec. 42, Ch. 27, Sp. L. November 1993.

15-7-209. Reclassification by owner — lien. (1) Whenever land that is or has been in agricultural use and is or has been valued, assessed, and taxed for agricultural use is applied to a use other than agricultural, the owner shall notify the department.

(2) The department shall provide, in a form eligible for recording, releases of lien, for those liens attributable to the former rollback tax, and the department shall present the releases to the county clerk and recorder for recording.

History: En. 84-437.16 by Sec. 5, Ch. 56, L. 1974; R.C.M. 1947, 84-437.16; amd. Sec. 1, Ch. 201, L. 1981; amd. Sec. 1, Ch. 423, L. 1981; amd. Sec. 1, Ch. 585, L. 1981; amd. Sec. 43, Ch. 27, Sp. L. November 1993.

15-7-210. Tax on change of use of part of tract. Separation or split-off of a part of the land which is being valued, assessed, and taxed under this part, either by conveyance or other actions of the owner of such land, for a use other than agricultural shall subject the land so separated to reclassification by the department but shall not impair the right of the remaining land to continuance of valuation, assessment, and taxation hereunder, provided it meets the minimum requirements of this part.

History: **En. Sec. 11, Ch. 512, L. 1973; R.C.M. 1947, 84-437.9; amd. Sec. 4, Ch. 201, L. 1981.**

15-7-211. Repealed. Sec. 6, Ch. 201, L. 1981.

History: **En. Sec. 12, Ch. 512, L. 1973; R.C.M. 1947, 84-437.10.**

15-7-212. Tract crossing county line — whole. Where contiguous land in agricultural use in one ownership is located in more than one county, compliance with the minimum requirements shall be determined on the basis of the total area and value of farm crops on such land and not the area or value of farm crops on land which is located in the particular county.

History: **En. Sec. 13, Ch. 512, L. 1973; R.C.M. 1947, 84-437.11.**

15-7-213. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

History: **En. Sec. 14, Ch. 512, L. 1973; R.C.M. 1947, 84-437.12.**

15-7-214. Repealed. Sec. 6, Ch. 201, L. 1981.

History: **En. Sec. 15, Ch. 512, L. 1973; R.C.M. 1947, 84-437.13.**

15-7-215. Repealed. Sec. 6, Ch. 201, L. 1981.

History: **En. Sec. 16, Ch. 512, L. 1973; R.C.M. 1947, 84-437.14; amd. Sec. 5, Ch. 581, L. 1979.**

15-7-216. Repealed. Sec. 2, Ch. 695, L. 1979.

History: **En. Sec. 1, Ch. 191, L. 1957; amd. Sec. 14, Ch. 405, L. 1973; amd. Sec. 1, Ch. 353, L. 1975; amd. Sec. 1, Ch. 123, L. 1977; R.C.M. 1947, 84-429.7(2).**

15-7-217 through 15-7-220 reserved.

15-7-221. Repealed. Secs. 4, 5, Ch. 563, L. 1995.

History: **En. Sec. 3, Ch. 267, L. 1993; amd. Sec. 5, Ch. 485, L. 1995; amd. Sec. 3, Ch. 563, L. 1995.**

15-7-222. Terminated. Sec. 12, Ch. 267, L. 1993.

History: **En. Sec. 4, Ch. 267, L. 1993.**

Part 3
Realty Transfer Act

15-7-301. Short title. This part may be cited as the “Realty Transfer Act”.

History: **En. 84-7301 by Sec. 1, Ch. 528, L. 1975; R.C.M. 1947, 84-7301.**

15-7-302. Purpose. The purpose of this part is to obtain sales price data necessary to the determination of statewide levels and uniformity of real estate assessments by the most efficient, economical, and reliable method.

History: **En. 84-7302 by Sec. 2, Ch. 528, L. 1975; R.C.M. 1947, 84-7302.**

15-7-303. Definitions. As used in this part, the following definitions apply:

(1) “Person” means an individual, corporation, partnership, or other business organization, trust, fiduciary, or agent or any other party presenting a document for recordation.

(2) “Real estate” includes:

(a) land;

(b) growing timber;

(c) buildings, structures, fixtures, fences, and improvements affixed to land.

(3) “Transfer” means an act of the parties or of the law by which the title to real property is conveyed from one person to another.

(4) “Value” means the amount of the full actual consideration for real estate paid or to be paid, including the amount of any lien or liens on the real estate.

History: **En. 84-7303 by Sec. 3, Ch. 528, L. 1975; R.C.M. 1947, 84-7303; amd. Sec. 57, Ch. 42, L. 1997.**

15-7-304. Report of transfers — change of ownership records. (1) All transfers of real property that are not evidenced by a recorded document, except those transfers otherwise provided for in this part, must be reported to the department on the form prescribed.

(2) The department is not required to change any ownership records used for the assessment or taxation of real property unless the department has received a transfer certificate from the clerk and recorder and the transfer has been reported to the department as provided by rule. If the grantor on the transfer certificate is not the person to whom the property is assessed on the property tax record, the department may not substitute the grantee's name on the certificate for the name of the current person listed on the property tax record, but the department shall add the grantee's name to the property tax record with the name of the person to whom the property is assessed. The department shall mail notification of the change to the person to whom the property is assessed and to the grantee. The department shall substitute the grantee's name on the property tax record when reliable evidence demonstrates that the grantee is the owner of the property for tax purposes.

History: En. 84-7304 by Sec. 4, Ch. 528, L. 1975; R.C.M. 1947, 84-7304; amd. Sec. 44, Ch. 27, Sp. L. November 1993; amd. Sec. 1, Ch. 532, L. 1995.

15-7-305. Realty transfer certificate required. (1) The county clerk and recorder shall require the parties to the transaction or their agents or representatives to complete a certificate declaring the consideration paid or to be paid for the real estate transferred.

(2) An instrument or deed evidencing a transfer of real estate may not be accepted for recordation until the certificate has been received by the county clerk and recorder. The validity or effectiveness of an instrument or deed between the parties to it is not affected by failure to comply with the provisions in this part.

(3) Except as provided in 85-2-423, the form of certificate must be prescribed by the department of revenue, and the department shall provide an adequate supply of forms to each county clerk and recorder in the state. The department shall coordinate with the department of natural resources and conservation and the water court to develop and provide the forms required under 85-2-423 and this part.

(4) The clerk and recorder shall prepare a certificate for each contract for deed filed for recording.

(5) The clerk and recorder shall transmit each executed certificate to the department.

History: En. 84-7305 by Sec. 5, Ch. 528, L. 1975; R.C.M. 1947, 84-7305; amd. Sec. 1, Ch. 167, L. 1997.

15-7-306. Rules. The department of revenue may prescribe such rules as are reasonably necessary to facilitate and expedite the provisions and administration of this part.

History: En. 84-7306 by Sec. 6, Ch. 528, L. 1975; R.C.M. 1947, 84-7306.

15-7-307. Certificate — exceptions. The certificate imposed by this part applies to all transfers. However, the certificate filed for the following transfers need not disclose the consideration paid or to be paid for the real estate transferred:

(1) an instrument recorded prior to July 1, 1975;

(2) the sale of agricultural land when the land is used for agricultural purposes;

(3) the sale of timberland when the land is used for producing timber;

(4) the United States of America, this state, or any instrumentality, agency, or subdivision thereof;

(5) an instrument which (without added consideration) confirms, corrects, modifies, or supplements a previously recorded instrument;

(6) a transfer pursuant to court decree;

(7) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships, or other business entities;

(8) a transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of subsidiary stock;

(9) a transfer of decedents' estates;

(10) a transfer of a gift;

(11) a transfer between husband and wife or parent and child with only nominal actual consideration therefor;

(12) an instrument the effect of which is to transfer the property to the same party or parties;

(13) a sale for delinquent taxes or assessments, sheriff sale, bankruptcy action, or mortgage foreclosure;

(14) a transfer made in contemplation of death.

History: En. 84-7307 by Sec. 7, Ch. 528, L. 1975; R.C.M. 1947, 84-7307; amd. Sec. 5, Ch. 681, L. 1985; amd. Sec. 2, Ch. 532, L. 1995.

Cross-References

Timberland — class ten property, 15-6-143.

15-7-308. Disclosure of information restricted — water right transfer certificate exception. (1) Except as provided in subsection (2), the certificate required by this part and the information contained in the certificate is not a public record and must be held confidential by the county clerk and recorder and the department. This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The confidentiality provisions do not apply to compilations from the certificates or to summaries, analyses, and evaluations based upon the compilations.

(2) The confidentiality provisions of this section do not apply to the information in the clerk and recorder's abbreviated copy of the realty transfer certificate or to the information contained in the water right transfer certificate prepared and filed with the department of natural resources and conservation pursuant to 85-2-424 for purposes of maintaining a system of centralized water right records as mandated by Article IX, section 3(4), of the Montana constitution. A person may access water right transfer information through the department of natural resources and conservation pursuant to the department's implementation of the requirements of 85-2-112(3).

History: En. 84-7308 by Sec. 8, Ch. 528, L. 1975; R.C.M. 1947, 84-7308; amd. Sec. 45, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 167, L. 1997.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

15-7-309. Classification or assessment methods. (1) This part shall not change or modify the methods of classification or assessment of real estate as provided for in this title or in any law of this state.

(2) The sale price of real estate shall not be the sole determinant of assessed value. The department shall consider, wherein the consideration is to be paid in deferred installments over a period of 10 years or more, the terms of the contract, amount of down payment, amount of each installment, rate of interest, and other covenants or exceptional circumstances which may affect the consideration paid for real estate.

History: En. 84-7309 by Sec. 9, Ch. 528, L. 1975; R.C.M. 1947, 84-7309.

15-7-310. Penalty. A person convicted of violating any provision of this part shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 84-7310 by Sec. 12, Ch. 528, L. 1975; R.C.M. 1947, 84-7310.

15-7-311. Costs. Notwithstanding 1-2-112, the duties, obligations, or responsibilities imposed on local government entities by this part are such that related costs are incurred as a part of their normal operating procedures.

History: En. 84-7311 by Sec. 10, Ch. 528, L. 1975; R.C.M. 1947, 84-7311.

Part 4
Appraisal of Residential Property in Areas of Changing Use

15-7-401. Purpose. The legislature finds that the rapid commercial and industrial growth in many Montana cities and towns is engulfing homes. Owners of these homes are often forced to pay higher property taxes upon these homes because their property is appraised on its industrial or commercial use. The legislature intends that houses and lots in these areas of changing use shall be appraised on their value as residential property.

History: En. Sec. 1, Ch. 702, L. 1979.

15-7-402. Application for residential appraisal of certain land and improvements. (1) Any person wishing to ensure that the person's residential land and improvements are appraised as residential may file a signed application with the department.

(2) In the application, the owner shall:

(a) assert that the property is used only for human habitation and is the principal residence of the owner;

(b) sign a statement pledging that the property will continue to be used as residential property; and

(c) show that the statement has been filed with the county clerk and recorder of the county in which the property is located.

(3) When the department has approved an application for residential use, the department and its agents shall consider only those indicia of value that the property has for residential use.

(4) Failure to file an application under this section may not result in reclassification on real property unless there has been an actual change in use.

History: En. Sec. 2, Ch. 702, L. 1979; amd. Sec. 46, Ch. 27, Sp. L. November 1993.

15-7-403. Rollback tax — computation. (1) (a) Subject to 15-10-420, if land and improvements appraised as residential as a result of an application filed under 15-7-402 are changed to industrial or commercial use, the property is subject to a rollback tax in addition to the property tax levied on the property. The rollback tax is a lien on the property and is due and payable by the owner of the property at the time of the change in use.

(b) As used in this section, "rollback" means the period preceding the change in use, not to exceed 5 years, during which the property was appraised as residential.

(2) The department shall determine the amount of rollback tax due on the property by:

(a) determining the taxable value of the property as industrial or commercial property;

(b) multiplying this value by the sum of the annual mill levies applied in the taxing jurisdiction in which the land is located during the rollback period; and

(c) subtracting from this figure the actual property tax paid on the property during this period.

History: En. Sec. 3, Ch. 702, L. 1979; amd. Sec. 47, Ch. 27, Sp. L. November 1993; amd. Sec. 88, Ch. 584, L. 1999.

CHAPTER 8

ASSESSMENT PROCEDURE

Part 1 — General Provisions

15-8-101. Department responsibilities.
15-8-102. County to furnish office space — allowable charge.
15-8-103. Repealed.
15-8-104. Department audit and review of taxable value — costs paid by department.
15-8-105. Repealed.
15-8-106. Repealed.
15-8-107 through 15-8-110 reserved.
15-8-111. Assessment — market value standard — exceptions.
15-8-112. Assessments to be made on classification and appraisal.
15-8-113. Appeal from percentage assignment.
15-8-114. Repealed.
15-8-115. Department to defend property tax appeals — costs and judgments.

Part 2 — When Property Is Assessed

15-8-201. General assessment day.
15-8-202. Motor vehicle assessment by department of justice.
15-8-203. Repealed.
15-8-204. Supplemental assessment.
15-8-205. Initial assessment of class four trailer, manufactured home, and mobile home property — when.

Part 3 — How Property Is Assessed

15-8-301. Statement — what to contain.
15-8-302. Repealed.
15-8-303. Statement to be completed and returned to department.
15-8-304. Enforcement powers of department.
15-8-305. Repealed.

15-8-306. Property concealed or misrepresented.
15-8-307. Land assessment.
15-8-308. Assessment not illegal for informality or delay.
15-8-309. Violation and penalty.

Part 4 — Where Property Is Assessed

15-8-401. Consigned property.
15-8-402. Property of person.
15-8-403. Repealed.
15-8-404. Property of particular types of firms.
15-8-405. Street railroads, bridges, and ferries.
15-8-406. Assessment of public utilities in one county.
15-8-407. Railroads.
15-8-408. Personal property.
15-8-409. Property not otherwise specified.

Part 5 — To Whom Property Is Assessed

15-8-501. Assessment of unknown or absent owners.
15-8-502. Representative status to be designated.
15-8-503. Undistributed property of deceased persons.
15-8-504. Property and money in litigation.
15-8-505 through 15-8-510 reserved.
15-8-511. Undivided interest in common elements of condominium project.
15-8-512. Common elements serving residential or commercial development.

Part 6 — Assessment Revision

15-8-601. Assessment revision — conference for review.

Part 7 — Assessment and Map Books

15-8-701. Property tax record — definition — listing property in.
15-8-702. Persons desiring to be listed.
15-8-703. Repealed.
15-8-704. Map book.
15-8-705. Repealed.
15-8-706. Repealed.
15-8-707. Correction of defects in property tax record.
15-8-708. Omissions in delinquent lists — correction by publication.
15-8-709. Statement of changes to be sent to county clerk and recorder.
15-8-710. Property tax record prima facie evidence.
15-8-711. List of owners of multiple, undivided interests in parcel of land to county treasurer.

Chapter Cross-References

Property tax administration, Art. VIII, sec. 3, Mont. Const.
Equal valuation, Art. VIII, sec. 4, Mont. Const.
Taxation of condominium units, 15-8-511, 15-8-512.
Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

Part 1
General Provisions

15-8-101. Department responsibilities. The department of revenue shall have full charge of assessing all property subject to taxation and equalizing values and shall secure such personnel as is necessary to properly perform its duties.

History: En. Sec. 1, Ch. 61, L. 1925; re-en. Sec. 2001.1, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1939; amd. Sec. 2, Ch. 405, L. 1973; amd. Sec. 49, Ch. 566, L. 1977; R.C.M. 1947, 84-402(2).

Cross-References

Assessment of Department basis for taxation of cities and towns, 7-6-4409.

15-8-102. County to furnish office space — allowable charge. The county commissioners of each county shall provide existing office space in the county courthouse or other county building for use by the department's staff, if space is reasonably available. A county may charge the department a rate that does not exceed the rental rate that the department of administration charges state agencies for space in state buildings. If space is not reasonably available in the courthouse or other county building, the department may contract for the procurement of suitable space. For purposes of this section, "county building" includes a city-county building or a building maintained by a consolidated government.

History: (1), (2)En. Sec. 1, Ch. 61, L. 1925; re-en. Sec. 2001.1, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1939; amd. Sec. 2, Ch. 405, L. 1973; amd. Sec. 49, Ch. 566, L. 1977; Sec. 84-402, R.C.M. 1947; (3)En. Sec. 3732, Pol. C. 1895; re-en. Sec. 2551, Rev. C. 1907; re-en. Sec. 2056, R.C.M. 1921; Cal. Pol. C. Sec. 3658; re-en. Sec. 2056, R.C.M. 1935; amd. Sec. 32, Ch. 405, L. 1973; Sec. 84-509, R.C.M. 1947; R.C.M. 1947, 84-402(1), (4), 84-509; amd. Sec. 48, Ch. 27, Sp. L. November 1993; amd. Sec. 1, Ch. 586, L. 1999.

Cross-References

Agent required to submit form for state land equalization payment, 77-1-503.

Agent required to explain and determine if taxpayer wishes to be covered under crop hail insurance levy, 80-2-204.

Agent required to add irrigation district assessment to assessment book, 85-7-2136.

Agent required to add drainage district assessment to assessment book, 85-8-601.

15-8-103. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(part).

15-8-104. Department audit and review of taxable value — costs paid by department. (1) When in the judgment of the director of revenue it is necessary, audits may be made for the purpose of determining the taxable value of net proceeds of mines and all other types of property subject to ad valorem taxation.

(2) The department may conduct reviews of the assessment of all commercial personal property to ensure that the value of the property in those classes reflects market value. Because the assessed value of commercial personal property is defined as market value under 15-8-111(2), the review conducted by the department may be directed toward ensuring that all taxable personal property is reported to the department.

(3) The cost of any audit or review performed under subsection (1) or (2) must be paid by the department.

History: (1)En. 84-708.9 by Sec. 1, Ch. 235, L. 1975; amd. Sec. 1, Ch. 107, L. 1977; Sec. 84-708.9, R.C.M. 1947; (2)En. 84-708.10 by Sec. 2, Ch. 235, L. 1975; Sec. 84-708.10, R.C.M. 1947; R.C.M. 1947, 84-708.9, 84-708.10; amd. Sec. 1, Ch. 222, L. 1979; amd. Sec. 10, Ch. 634, L. 1979; amd. Sec. 3, Ch. 613, L. 1981; amd. Sec. 9, Ch. 743, L. 1985; amd. Sec. 49, Ch. 27, Sp. L. November 1993; amd. Sec. 58, Ch. 42, L. 1997.

15-8-105. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

History: En. Sec. 2, Ch. 623, L. 1989.

15-8-106. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

History: En. Sec. 3, Ch. 623, L. 1989.

15-8-107 through 15-8-110 reserved.

15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) If the department uses the capitalization of net income method as one approximation of market value and sufficient, relevant information on comparable sales and construction cost exists, the department shall rely upon the two methods that provide a similar market value as the better indicators of market value.

(d) Except as provided in subsection (3), the market value of special mobile equipment and agricultural tools, implements, and machinery is the average wholesale value shown in national appraisal guides and manuals or the value before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the average wholesale value category as shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association, St. Louis, Missouri. If the guide or the average wholesale value category is unavailable, the department shall use a comparable publication or wholesale value category.

(b) for agricultural implements and machinery not listed in an official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Titles 15 and 61.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through 15-6-134, 15-6-143, and 15-6-145 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-134, under class four, are assessed at the applicable percentage of market value minus any portion of market value that is exempt from taxation under 15-6-201(1)(z) and (1)(aa).

(e) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(f) Railroad transportation properties in 15-6-145 are assessed based on the valuation formula described in 15-23-205.

(7) Land and the improvements on the land are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

History: En. Sec. 5, p. 76, L. 1891; re-en. Sec. 3690, Pol. C. 1895; re-en. Sec. 2502, Rev. C. 1907; re-en. Sec. 2001, R.C.M. 1921; Cal. Pol. C. Sec. 3627; re-en. Sec. 2001, R.C.M. 1935; amd. Sec. 2, Ch. 512, L. 1973; amd. Sec. 1, Ch. 56, L. 1974; amd. Sec. 1, Ch. 209, L. 1975; amd. Sec. 1, Ch. 436, L. 1975; amd. Sec. 5, Ch. 498, L. 1977; amd. Sec. 21, Ch. 566, L. 1977; R.C.M. 1947, 84-401; amd. Sec. 11, Ch. 634, L. 1979; amd. Secs. 10, 13, Ch. 686, L. 1979; amd. Sec. 17, Ch. 693, L. 1979; amd. Sec. 66, Ch. 575, L. 1981; amd. Sec. 2, Ch. 578, L. 1981; amd. Sec. 3, Ch. 323, L. 1983; amd. Sec. 1, Ch. 463, L. 1985; amd. Sec. 6, Ch. 516, L. 1985; amd. Sec. 6, Ch. 681, L. 1985; amd. Sec. 7, Ch. 743, L. 1985; amd. Sec. 4, Ch. 7, Sp. L. March 1986; amd. Sec. 3, Ch. 34, Sp. L. June 1986; amd. Sec. 5, Ch. 35, Sp. L. June 1986; amd. Sec. 37, Ch. 370, L. 1987; amd. Sec. 6, Ch. 453, L. 1987; amd. Sec. 1, Ch. 593, L. 1987; amd. Sec. 3, Ch. 618, L. 1987; amd. Sec. 4, Ch. 531, L. 1989; amd. Sec. 4, Ch. 695, L. 1991; amd. Sec. 16, Ch. 773, L. 1991; amd. Sec. 10, Ch. 783, L. 1991; amd. Sec. 4, Ch. 506, L. 1993; amd. Sec. 50, Ch. 27, Sp. L. November 1993; amd. Sec. 4, Ch. 397, L. 1995; amd. Sec. 1, Ch. 299, L. 1997; amd. Sec. 4, Ch. 496, L. 1997; amd. Sec. 1, Ch. 531, L. 1999; amd. Sec. 89, Ch. 584, L. 1999; amd. Sec. 1, Ch. 589, L. 1999; amd. Sec. 5, Ch. 11, Sp. L. May 2000.

Compiler's Comments

2000 Amendment: Chapter 11 in (6)(d) deleted reference to 15-6-201(1)(bb). Amendment effective May 25, 2000.

Applicability: Section 18(3), Ch. 11, Sp. L. May 2000, provided: "[Sections 1 through 5] [15-6-136, 15-6-138, 15-6-201, 15-7-111, and 15-8-111] apply to tax years beginning after December 31, 2001."

Cross-References

Definition of assessed value, 15-1-101.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

Taxation of land subject to conservation easement, 76-6-208.

15-8-112. Assessments to be made on classification and appraisal. (1) The assessments of all lands, all city and town lots, and all improvements must be made on the classification and appraisal as made or caused to be made by the department.

(2) The percentage basis of assessed value as provided for in chapter 6, part 1, is determined and assigned by the department when it makes its annual assessment of the property that it is required to assess centrally. The department shall apportion the assessments to the various counties, and its determination is final except as to the right of review in the state tax appeal board or the proper court.

History: (1)En. Sec. 3, Ch. 191, L. 1957; amd. Sec. 16, Ch. 405, L. 1973; Sec. 84-429.9, R.C.M. 1947; (2)En. Sec. 3, Ch. 61, L. 1925; re-en. Sec. 2001.3, R.C.M. 1935; amd. Sec. 49, Ch. 100, L. 1973; amd. Sec. 2, Ch. 516, L. 1973; amd. Sec. 8, Ch. 98, L. 1977; amd. Sec. 50, Ch. 566, L. 1977; Sec. 84-404, R.C.M. 1947; R.C.M. 1947, 84-404, 84-429.9; amd. Sec. 51, Ch. 27, Sp. L. November 1993.

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

15-8-113. Appeal from percentage assignment. If any taxpayer disagrees with the percentage assignment made by the department, the taxpayer may appeal to the county tax appeal board on the percentage assignment the same as a taxpayer may now appeal on valuations and also may appeal from the county tax appeal board to the state tax appeal board, whose findings are final except as to the right of review in the proper courts.

History: En. Sec. 2, Ch. 61, L. 1925; re-en. Sec. 2001.2, R.C.M. 1935; amd. Sec. 3, Ch. 405, L. 1973; R.C.M. 1947, 84-403; amd. Sec. 52, Ch. 27, Sp. L. November 1993.

Cross-References

State Tax Appeal Board, Title 15, ch. 2.
County Tax Appeal Board, Title 15, ch. 15, part 1.

15-8-114. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

History: En. Sec. 5, Ch. 61, L. 1925; re-en. Sec. 2001.5, R.C.M. 1935; amd. Sec. 3, Ch. 516, L. 1973; R.C.M. 1947, 84-405.

15-8-115. Department to defend property tax appeals — costs and judgments. (1) Except as provided in 15-8-202, the department is the party defendant in any proceeding before a county tax appeal board, the state tax appeal board, or a court of law that seeks to dispute or adjust an action of the department under 15-8-101 arising from the exercise of the department's duties as prescribed by law or administrative rule. For the purposes of proceedings before county tax appeal boards, service on the department may be obtained by serving the person designated to receive service for the department.

(2) Costs, if any, must be assessed against the department and not against a local taxing unit.

(3) In a suit brought in a court of this state for the refund of taxes paid under protest in which the taxes paid are held by the treasurer of a unit of local government in a protest fund, the court shall enter judgment, exclusive of costs, against the treasurer if the court finds the taxes should be refunded.

History: En. Sec. 1, Ch. 589, L. 1979; amd. Sec. 1, Ch. 398, L. 1983; amd. Sec. 53, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 85, L. 1999.

Part 2
When Property Is Assessed

Part Cross-References

Taxation of condominium units, 15-8-511, 15-8-512.
Owner of life estate under duty to pay taxes, 70-16-103.

15-8-201. General assessment day. (1) The department shall, between January 1 and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county.

(2) The department shall assess property to:

(a) the person by whom it was owned or claimed or in whose possession or control it was at midnight of the preceding January 1; or

(b) except in the case of land splits, the new owner if the provisions of 15-7-304 have been met and the transfer certificate has been received and processed prior to determining the taxes that are due as provided in 15-10-305(2).

(3) The department shall also ascertain and assess all mobile homes arriving in the county after midnight of the preceding January 1.

(4) A mistake in the name of the owner or supposed owner of real property does not invalidate the assessment.

(5) The procedure provided by this section does not apply to:

(a) motor vehicles;

(b) motor homes, travel trailers, and campers;

(c) watercraft;

(d) livestock;

(e) property defined in 61-1-104 as special mobile equipment that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate;

(f) mobile homes and manufactured homes held by a distributor or dealer as stock in trade; and

(g) property subject to the provisions of 15-16-203.

History: En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R.C.M. 1921; Cal. Pol. C. Sec. 3628; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1, Ch. 30, L. 1935; re-en. Sec. 2002, R.C.M. 1935; amd. Sec. 9, Ch. 72, L. 1937; amd. Sec. 2, Ch. 256, L. 1955; amd. Sec. 2, Ch. 245, L. 1963; amd. Sec. 1, Ch. 86, L. 1965; amd. Sec. 2, Ch. 232, L. 1967; amd. Sec. 3, Ch. 290, L. 1967; amd. Sec. 3, Ch. 296, L. 1967; amd. Sec. 1, Ch. 40, L. 1969; amd. Sec. 1, Ch. 180, L. 1969; amd. Sec. 6, Ch. 435, L. 1971; amd. Sec. 4, Ch. 405, L. 1973; amd. Sec. 5, Ch. 414, L. 1973; amd. Sec. 10, Ch. 74, L. 1975; amd. Sec. 2, Ch. 327, L. 1975; amd. Sec. 8, Ch. 388, L. 1975; amd. Sec. 2, Ch. 507, L. 1975; amd. Sec. 3, Ch. 126, L. 1977; amd. Sec. 2, Ch. 211, L. 1977; amd. Sec. 5, Ch. 260, L. 1977; amd. Sec. 51, Ch. 566, L. 1977; R.C.M. 1947, 84-406(1) thru (3); amd. Sec. 1, Ch. 663, L. 1979; amd. Sec. 22, Ch. 712, L. 1979; amd. Sec. 12, Ch. 614, L. 1981; amd. Sec. 5, Ch. 20, L. 1985; amd. Sec. 7, Ch. 516, L. 1985; amd. Sec. 38, Ch. 370, L. 1987; amd. Sec. 6, Ch. 611, L. 1987; amd. Sec. 3, Ch. 649, L. 1987; amd. Sec. 2, Ch. 570, L. 1991; amd. Sec. 54, Ch. 27, Sp. L. November 1993; amd. Sec. 8, Ch. 200, L. 1997; amd. Sec. 3, Ch. 414, L. 1997; amd. Sec. 5, Ch. 496, L. 1997; amd. Sec. 3, Ch. 583, L. 1999.

Cross-References

Land split defined, 15-7-108.
Motorcycle defined, 61-1-105.
Quadricycle defined, 61-1-133.
Fee in lieu of tax on motor homes and travel trailers, 61-3-521.
Assessment of land purchased from state, 77-2-313.

15-8-202. Motor vehicle assessment by department of justice. (1) (a) The department of justice shall determine the registration fee on light vehicles in accordance with 61-3-560 through 61-3-562.

(b) For the purposes of the local option vehicle tax under 61-3-537, the department of justice shall assess all light vehicles, subject to 61-3-313 through 61-3-316 and 61-3-501, for taxation in accordance with 61-3-503.

(c) The department of justice shall determine the fee in lieu of tax for all buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors in accordance with 61-3-528 and 61-3-529.

(d) Taxes, registration fees, or fees in lieu of tax on a motor vehicle under this subsection (1) must be assessed or imposed in each year on the person who owned or claimed the motor vehicles or in whose possession or control the motor vehicle was on the anniversary registration date.

(2) A tax or fee in lieu of tax may not be assessed or imposed against motor vehicles subject to taxation or to a fee in lieu of tax that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles subject to taxation or a fee in lieu of tax that are brought into the state after January 1 as motor vehicle dealers' inventories must be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.

(3) "Purchasers" includes dealers who apply for registration or reregistration of motor vehicles.

(4) Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, must be assessed at market value as of January 1.

(5) (a) The department of justice is authorized to appear in any proceeding before a county tax appeal board, the state tax appeal board, or a court that seeks to dispute an assessment made by the department pursuant to the authority granted under this section.

(b) For the purposes of proceedings before county tax appeal boards or the state tax appeal board, service of the application required under 15-15-201 must be made on the attorney general. A copy of any application giving rise to a proceeding before a county tax appeal board or the state tax appeal board must also be served on the county treasurer of the county in which the vehicle that is the subject of the proceeding was registered.

History: En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R.C.M. 1921; Cal. Pol. C. Sec. 3628; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1, Ch. 30, L. 1935; re-en. Sec. 2002, R.C.M. 1935; amd. Sec. 9, Ch. 72, L. 1937; amd. Sec. 2, Ch. 256, L. 1955; amd. Sec. 2, Ch. 245, L. 1963; amd. Sec. 1, Ch. 86, L. 1965; amd. Sec. 2, Ch. 232, L. 1967; amd. Sec. 3, Ch. 290, L. 1967; amd. Sec. 3, Ch. 296, L. 1967; amd. Sec. 1, Ch. 40, L. 1969; amd. Sec. 1, Ch. 180, L. 1969; amd. Sec. 6, Ch. 435, L. 1971; amd. Sec. 4, Ch. 405, L. 1973; amd. Sec. 5, Ch. 414, L. 1973; amd. Sec. 10, Ch. 74, L. 1975; amd. Sec. 2, Ch. 327, L. 1975; amd. Sec. 8, Ch. 388, L. 1975; amd. Sec. 2, Ch. 507, L. 1975; amd. Sec. 3, Ch. 126, L. 1977; amd. Sec. 2, Ch. 211, L. 1977; amd. Sec. 5, Ch. 260, L. 1977; amd. Sec. 51, Ch. 566, L. 1977; R.C.M. 1947, 84-406(4); amd. Sec. 23, Ch. 712, L. 1979; amd. Sec. 1, Ch. 262, L. 1981; amd. Sec. 13, Ch. 614, L. 1981; amd. Sec. 2, Ch. 433, L. 1985; amd. Sec. 8, Ch. 516, L. 1985; amd. Sec. 7, Ch. 611, L. 1987; amd. Sec. 55, Ch. 27, Sp. L. November 1993; amd. Sec. 6, Ch. 496, L. 1997; amd. Sec. 3, Ch. 85, L. 1999; amd. Sec. 7, Ch. 515, L. 1999.

Compiler's Comments

2000 Amendment by Referendum: Chapter 515, L. 1999, inserted (1)(a) concerning registration fee for light vehicles; at beginning of (1)(b) inserted clause concerning local option vehicle tax; in (1)(d) near beginning inserted "registration fees"; in definition of purchasers at end deleted "except as otherwise provided by 61-3-502"; and made minor changes in style. Amendment effective November 7, 2000.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

Cross-References

Motorcycle defined, 61-1-105.
Quadricycle defined, 61-1-133.
Assessment of motor vehicles, 61-3-503.
Registration of foreign motor vehicles, Title 61, ch. 3, part 7.
Transportation of vehicles through state, Title 61, ch. 4, part 3.

15-8-203. Repealed. Sec. 30, Ch. 712, L. 1979.

History: En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R.C.M. 1921; Cal. Pol. C. Sec. 3628; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1, Ch. 30, L. 1935; re-en. Sec. 2002, R.C.M. 1935; amd. Sec. 9, Ch. 72, L. 1937; amd. Sec. 2, Ch. 256, L. 1955; amd. Sec. 2, Ch. 245, L. 1963; amd. Sec. 1, Ch. 86, L. 1965; amd. Sec. 2, Ch. 232, L. 1967; amd. Sec. 3, Ch. 290, L. 1967; amd. Sec. 3, Ch. 296, L. 1967; amd. Sec. 1, Ch. 40, L. 1969; amd. Sec. 1, Ch. 180, L. 1969; amd. Sec. 6, Ch. 435, L. 1971; amd. Sec. 4, Ch. 405, L. 1973; amd. Sec. 5, Ch. 414, L. 1973; amd. Sec. 10, Ch. 74, L. 1975; amd. Sec. 2, Ch. 327, L. 1975; amd. Sec. 8, Ch. 388, L. 1975; amd. Sec. 2, Ch. 507, L. 1975; amd. Sec. 3, Ch. 126, L. 1977; amd. Sec. 2, Ch. 211, L. 1977; amd. Sec. 5, Ch. 260, L. 1977; amd. Sec. 51, Ch. 566, L. 1977; R.C.M. 1947, 84-406(5).

15-8-204. Supplemental assessment. When any personal property liable to taxation is brought into a county at any time after the second Monday of July and such property has not been assessed for that year, it must be listed and assessed the same as if it had been in the county at the time of the regular assessment, and the tax must be collected, as provided in this code, at any time.

History: En. Sec. 4022, Pol. C. 1895; re-en. Sec. 2740, Rev. C. 1907; re-en. Sec. 2035, R.C.M. 1921; re-en. Sec. 2035, R.C.M. 1935; amd. Sec. 20, Ch. 405, L. 1973; R.C.M. 1947, 84-441.

15-8-205. Initial assessment of class four trailer, manufactured home, and mobile home property — when. The department shall assess all class four trailer, manufactured home, and mobile home property immediately upon arrival in the county if the taxes have not been previously paid for that year in another county in Montana.

History: En. Sec. 5, Ch. 632, L. 1983; amd. Sec. 10, Ch. 773, L. 1991; amd. Sec. 56, Ch. 27, Sp. L. November 1993; amd. Sec. 9, Ch. 200, L. 1997.

Part 3
How Property Is Assessed

15-8-301. Statement — what to contain. (1) The department may require from a person a statement under oath setting forth specifically all the real and personal property owned by, in possession of, or under the control of the person at midnight on January 1. The statement must be in writing, showing separately:

(a) all property belonging to, claimed by, or in the possession or under the control or management of the person;

(b) all property belonging to, claimed by, or in the possession or under the control or management of any firm of which the person is a member;

(c) all property belonging to, claimed by, or in the possession or under the control or management of any corporation of which the person is president, secretary, cashier, or managing agent;

(d) the county in which the property is situated or in which the property is liable to taxation and, if liable to taxation in the county in which the statement is made, also the city, town, school district, road district, or other revenue districts in which the property is situated;

(e) an exact description of all lands, improvements, and personal property;

(f) all depots, shops, stations, buildings, and other structures erected on the space covered by the right-of-way and all other property owned by any person owning or operating any railroad within the county.

(2) The department shall notify the taxpayer in the statement for reporting personal property owned by a business or used in a business that the statement is for reporting business equipment and other business personal property described in Title 15, chapter 6, part 1. A taxpayer owning exempt business equipment is subject to limited reporting requirements; however, all new businesses shall report their class eight property so that the department can determine the market value of the property. The department shall by rule develop reporting requirements for business equipment to limit the annual reporting of exempt business equipment to the extent feasible.

(3) Whenever one member of a firm or one of the proper officers of a corporation has made a statement showing the property of the firm or corporation, another member of the firm or another officer is not required to include the property in that person's statement but the statement must show the name of the person or officer who made the statement in which the property is included.

(4) The fact that a statement is not required or that a person has not made a statement, under oath or otherwise, does not relieve the person's property from taxation.

History: En. Sec. 14, p. 78, L. 1891; amd. Sec. 3701, Pol. C. 1895; re-en. Sec. 2511, Rev. C. 1907; re-en. Sec. 2003, R.C.M. 1921; Cal. Pol. C. Sec. 3629; re-en. Sec. 2003, R.C.M. 1935; amd. Sec. 5, Ch. 405, L. 1973; amd. Sec. 9, Ch. 388, L. 1975; R.C.M. 1947, 84-409; amd. Sec. 4, Ch. 649, L. 1987; amd. Sec. 57, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 347, L. 1995; amd. Sec. 15, Ch. 285, L. 1999.

Cross-References

Notice required if Department revises statement valuation, 15-8-601.

15-8-302. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

History: En. Sec. 15, p. 80, L. 1891; re-en. Sec. 3702, Pol. C. 1895; re-en. Sec. 2512, Rev. C. 1907; re-en. Sec. 2004, R.C.M. 1921; Cal. Pol. C. Sec. 3630; re-en. Sec. 2004, R.C.M. 1935; amd. Sec. 6, Ch. 405, L. 1973; amd. Sec. 10, Ch. 388, L. 1975; R.C.M. 1947, 84-410.

15-8-303. Statement to be completed and returned to department. The department may deliver the statement specified in 15-8-301 to the person owning taxable property and require the person, within an appointed time, to return the statement, properly filled out. The department shall notify the person making the statement of any corrections made by the department.

History: En. Sec. 16, p. 80, L. 1891; re-en. Sec. 3703, Pol. C. 1895; re-en. Sec. 2513, Rev. C. 1907; re-en. Sec. 2005, R.C.M. 1921; Cal. Pol. C. Sec. 3631; re-en. Sec. 2005, R.C.M. 1935; amd. Sec. 7, Ch. 405, L. 1973; R.C.M. 1947, 84-411; amd. Sec. 58, Ch. 27, Sp. L. November 1993.

15-8-304. Enforcement powers of department. (1) The department may:

(a) require any person in the state to make and subscribe an affidavit, giving the person's name, place of residence, and post-office address;

(b) subpoena and examine any person in relation to any statement furnished to the department or any statement that discloses property that is assessable in the state.

(2) The department may exercise this power in any county where the person whom it desires to examine may be found but may not require the person to appear before it in any county other than that in which the subpoena is served.

History: En. Sec. 17, p. 81, L. 1891; re-en. Sec. 3704, Pol. C. 1895; re-en. Sec. 2514, Rev. C. 1907; re-en. Sec. 2006, R.C.M. 1921; Cal. Pol. C. Sec. 3632; re-en. Sec. 2006, R.C.M. 1935; amd. Sec. 8, Ch. 405, L. 1973; R.C.M. 1947, 84-412(part); amd. Sec. 59, Ch. 27, Sp. L. November 1993.

15-8-305. Repealed. Sec. 4, Ch. 357, L. 1985.

History: En. Sec. 18, p. 82, L. 1891; amd. Sec. 3705, Pol. C. 1895; re-en. Sec. 2515, Rev. C. 1907; re-en. Sec. 2007, R.C.M. 1921; Cal. Pol. C. Sec. 3633; re-en. Sec. 2007, R.C.M. 1935; amd. Sec. 9, Ch. 405, L. 1973; R.C.M. 1947, 84-413.

15-8-306. Property concealed or misrepresented. Upon discovery, any property willfully concealed, removed, transferred, or misrepresented by the owner or agent thereof to evade taxation must be assessed at not exceeding 10 times its value, and the assessment so made must not be reduced by the county tax appeal board.

History: En. Sec. 33, p. 84, L. 1891; amd. Sec. 3722, Pol. C. 1895; re-en. Sec. 2541, Rev. C. 1907; re-en. Sec. 2033, R.C.M. 1921; Cal. Pol. C. Sec. 3648; re-en. Sec. 2033, R.C.M. 1935; amd. Sec. 18, Ch. 405, L. 1973; R.C.M. 1947, 84-439.

Cross-References

Applicable to horses taken in roundup, 81-4-511.

15-8-307. Land assessment. (1) Except as provided in subsection (2), land must be assessed in parcels or subdivisions not exceeding 640 acres, and tracts of land containing more than 640 acres that have been sectionized by the United States government must be assessed by sections or fractions of sections.

(2) If the department receives the written consent of all persons with an ownership interest, the department may assess multiple parcels or tracts of land with common ownership collectively as a single tract of land.

(3) The department shall itemize in the property tax record the description of each 640 acres of land or less, the number of acres, the description, the value of the land, the value of improvements, and the total value. The property tax record must itemize the description of each town or city lot and the value of the lot and any improvements on the lot, except that a lot and improvements must be separately assessed when required under 15-8-111. If all of the unimproved lots of the same value are located in one block or are owned by the same party, the lots may be described and assessed in a single unit in the manner prescribed for each lot. Each parcel and lot must be segregated in the property tax record to correlate the description of the parcel or lot to the total value of the parcel or lot and any improvements on the parcel or lot.

History: En. Sec. 12, p. 77, L. 1891; re-en. Sec. 3697, Pol. C. 1895; re-en. Sec. 2509, Rev. C. 1907; re-en. Sec. 2023, R.C.M. 1921; Cal. Pol. C. Sec. 3628; re-en. Sec. 2023, R.C.M. 1935; amd. Sec. 13, Ch. 405, L. 1973; amd. Sec. 2, Ch. 436, L. 1975; R.C.M. 1947, 84-429(part); amd. Sec. 60, Ch. 27, Sp. L. November 1993.

15-8-308. Assessment not illegal for informality or delay. No assessment or act relating to assessment or collection of taxes is illegal on account of informality or because the same was not completed within the time required by law.

History: En. Sec. 4014, Pol. C. 1895; re-en. Sec. 2732, Rev. C. 1907; re-en. Sec. 2036, R.C.M. 1921; re-en. Sec. 2036, R.C.M. 1935; Cal. Pol. C. Sec. 3885; R.C.M. 1947, 84-442.

15-8-309. Violation and penalty. A person who fails for any reason to file or return the statement required by 15-8-301 must be assessed a $25 penalty. The department shall deposit the penalty to the credit of the state general fund.

History: En. Sec. 17, p. 81, L. 1891; re-en. Sec. 3704, Pol. C. 1895; re-en. Sec. 2514, Rev. C. 1907; re-en. Sec. 2006, R.C.M. 1921; Cal. Pol. C. Sec. 3632; re-en. Sec. 2006, R.C.M. 1935; amd. Sec. 8, Ch. 405, L. 1973; R.C.M. 1947, 84-412(part); amd. Sec. 10, Ch. 557, L. 1987; amd. Sec. 4, Ch. 427, L. 1999.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

Part 4

Where Property Is Assessed

15-8-401. Consigned property. All personal property consigned for sale to any person within this state from any place out of the state must be assessed as other property.

History: En. Sec. 21, p. 82, L. 1891; re-en. Sec. 3709, Pol. C. 1895; re-en. Sec. 2519, Rev. C. 1907; re-en. Sec. 2011, R.C.M. 1921; Cal. Pol. C. Sec. 3638; re-en. Sec. 2011, R.C.M. 1935; R.C.M. 1947, 84-417.

15-8-402. Property of person. The property of every person must be assessed in the county where the property is located and must be assessed in the name of that person.

History: **En. Sec. 23, p. 82, L. 1891; re-en. Sec. 3711, Pol. C. 1895; re-en. Sec. 2521, Rev. C. 1907; re-en. Sec. 2013, R.C.M. 1921; Cal. Pol. C. Sec. 3641; re-en. 2013, R.C.M. 1935; R.C.M. 1947, 84-419; amd. Sec. 61, Ch. 27, Sp. L. November 1993.**

15-8-403. Repealed. Sec. 11, Ch. 583, L. 1999.

History: **En. Sec. 3713, Pol. C. 1895; re-en. Sec. 2523, Rev. C. 1907; re-en. Sec. 2015, R.C.M. 1921; re-en. Sec. 2015, R.C.M. 1935; R.C.M. 1947, 84-421.**

15-8-404. Property of particular types of firms. (1) The personal property belonging to the business of a merchant or of a manufacturer must be listed in the town or district where the business is carried on.

(2) The personal property of express, transportation, and stage companies must be listed and assessed in the county, town, or district where the property is usually kept.

(3) The personal property of gas and water companies must be listed and assessed in the county, town, or district where the principal works are located. Gas and water mains and pipes laid in roads, streets, or alleys are personal property.

History: **En. Secs. 25, 26, 27, 28, p. 83, L. 1891; re-en. Secs. 3714, 3715, 3716, 3717, Pol. C. 1895; re-en. Secs. 2524, 2525, 2526, 2527, Rev. C. 1907; re-en. Secs. 2016, 2017, 2018, 2019, R.C.M. 1921; re-en. Secs. 2016, 2017, 2018, 2019, R.C.M. 1935; R.C.M. 1947, 84-422, 84-423, 84-424, 84-425; amd. Sec. 5, Ch. 649, L. 1987; amd. Sec. 4, Ch. 583, L. 1999.**

15-8-405. Street railroads, bridges, and ferries. Street railroads, bridges, and ferries owned by persons or corporations must be listed and assessed in the county, town, or district where the property or any portion of the property is located. The track of the railroad and the bridge are personal property.

History: **En. Sec. 29, p. 83, L. 1891; re-en. Sec. 3718, Pol. C. 1895; re-en. Sec. 2528, Rev. C. 1907; re-en. Sec. 2020, R.C.M. 1921; re-en. Sec. 2020, R.C.M. 1935; R.C.M. 1947, 84-426; amd. Sec. 5, Ch. 583, L. 1999.**

15-8-406. Assessment of public utilities in one county. Railroads operated or situated in one county; telegraph, telephone, and electric light lines and similar properties situated in one county; and canals, ditches, and flumes situated in one county must be listed and assessed in the county in which the property is located. The department shall require the owner of the property or the owner's agent or any officer of a corporation owning the the property to make a verified statement containing a list of the number of miles on which the property is operated or situated in the county and the value of the property.

History: **En. Sec. 30, p. 83, L. 1891; re-en. Sec. 3719, Pol. C. 1895; re-en. Sec. 2529, Rev. C. 1907; amd. Sec. 1, Ch. 24, L. 1921; re-en. Sec. 2021, R.C.M. 1921; re-en. Sec. 2021, R.C.M. 1935; amd. Sec. 12, Ch. 405, L. 1973; R.C.M. 1947, 84-427; amd. Sec. 6, Ch. 583, L. 1999.**

Cross-References

Central assessment of public utilities, Title 15, ch. 23, part 3.

15-8-407. Railroads. The roadway, roadbed, rails, rolling stock, and all other operating property of a railroad operated in more than one county or more than one state must be assessed by the department of revenue as provided in Title 15, chapter 23, part 2.

History: **En. Sec. 11, p. 76, L. 1891; re-en. Sec. 3696, Pol. C. 1895; re-en. Sec. 2508, Rev. C. 1907; re-en. Sec. 2022, R.C.M. 1921; Cal. Pol. C. Sec. 3628; re-en. Sec. 2022, R.C.M. 1935; amd. Sec. 4, Ch. 516, L. 1973; R.C.M. 1947, 84-428; amd. Sec. 3, Ch. 686, L. 1979; amd. Sec. 7, Ch. 583, L. 1999.**

Cross-References

Central assessment of railroads, Title 15, ch. 23, part 2.

15-8-408. Personal property. Personal property, other than livestock, subject to taxation or a fee in lieu of tax in the state shall be taxable in the taxing jurisdiction where it is located on January 1, whether or not the same is owned, claimed, or possessed by the person, as defined in 15-1-102, owning, claiming, or possessing it on January 1.

History: **En. Sec. 158, p. 121, L. 1891; re-en. Sec. 3943, Pol. C. 1895; amd. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2686, Rev. C. 1907; re-en. Sec. 2247, R.C.M. 1921; Cal. Pol. C. Sec. 3823; amd. Sec. 1, Ch. 122, L. 1933; re-en. Sec. 2247, R.C.M. 1935; amd. Sec. 15, Ch. 388, L. 1975; R.C.M. 1947, 84-4209(part); amd. Sec. 6, Ch. 598, L. 1989.**

Cross-References

Definition of personal property, 15-1-101.

Migratory personal property, Title 15, ch. 24, part 3.

15-8-409. Property not otherwise specified. All other taxable property must be assessed in the county, city, or district in which it is situated.

History: En. Sec. 12, p. 77, L. 1891; re-en. Sec. 3697, Pol. C. 1895; re-en. Sec. 2509, Rev. C. 1907; re-en. Sec. 2023, R.C.M. 1921; Cal. Pol. C. Sec. 3628; re-en. Sec. 2023, R.C.M. 1935; amd. Sec. 13, Ch. 405, L. 1973; amd. Sec. 2, Ch. 436, L. 1975; R.C.M. 1947, 84-429(part).

Part 5

To Whom Property Is Assessed

Part Cross-References

Owner of life estate under duty to pay taxes, 70-16-103.

15-8-501. Assessment of unknown or absent owners. (1) If the owner or claimant of any property not listed by another person is absent or unknown, the department must make an estimate of the value of such property.

(2) If the name of the absent owner is known to the department, the property must be assessed in his name; if unknown, the property must be assessed to unknown owners.

History: En. Secs. 19, 20, p. 82, L. 1891; re-en. Secs. 3706, 3707, Pol. C. 1895; re-en. Secs. 2516, 2517, Rev. C. 1907; re-en. Secs. 2008, 2009, R.C.M. 1921; Cal. Pol. C. Secs. 3635, 3636; re-en. Secs. 2008, 2009, R.C.M. 1935; amd. Secs. 10, 11, Ch. 405, L. 1973; R.C.M. 1947, 84-414, 84-415.

15-8-502. Representative status to be designated. When a person is assessed as agent, trustee, bailee, guardian, executor, or administrator, his representative designation must be added to his name and the assessment entered on a separate line from his individual assessment.

History: En. Sec. 22, p. 82, L. 1891; re-en. Sec. 3710, Pol. C. 1895; re-en. Sec. 2520, Rev. C. 1907; re-en. Sec. 2012, R.C.M. 1921; Cal. Pol. C. Sec. 3639; re-en. Sec. 2012, R.C.M. 1935; R.C.M. 1947, 84-418.

15-8-503. Undistributed property of deceased persons. The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, executors, or administrators, and a payment of taxes made by either binds all the parties in interest for their equal proportions.

History: En. Sec. 24, p. 82, L. 1891; re-en. Sec. 3712, Pol. C. 1895; re-en. Sec. 2522, Rev. C. 1907; re-en. Sec. 2014, R.C.M. 1921; Cal. Pol. C. Sec. 3642; re-en. Sec. 2014, R.C.M. 1935; R.C.M. 1947, 84-420.

15-8-504. Property and money in litigation. Money and property in litigation in possession of a county treasurer or of a court or a clerk thereof or receiver must be assessed to such treasurer, clerk, or receiver and the taxes paid thereon under the direction of the court.

History: En. Sec. 32, p. 84, L. 1891; re-en. Sec. 3721, Pol. C. 1895; re-en. Sec. 2540, Rev. C. 1907; re-en. Sec. 2032, R.C.M. 1921; Cal. Pol. C. Sec. 3647; re-en. Sec. 2032, R.C.M. 1935; R.C.M. 1947, 84-438.

15-8-505 through 15-8-510 reserved.

15-8-511. Undivided interest in common elements of condominium project. (1) Each unit of a condominium project is considered a parcel of real property subject to separate assessment and taxation. Each unit owner must be assessed for the unit owner's percentage of undivided interest in elements of the condominium project, except parks, owned in common by the unit owners. The percentage of undivided interest stated in a unit declaration is the figure to be used in assessing common elements under this section.

(2) Unless otherwise agreed by all the unit owners, for purposes of assessment common elements include:

(a) the land on which the building is located, except any portion thereof included in a unit or made a limited common element by the declaration;

(b) the foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances, and exits of the building;

(c) the basements, yards, gardens, parking areas, outside storage spaces, private pathways, sidewalks, and private roads;

(d) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal, and incinerating;

(e) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(f) the premises for the lodging of janitors or caretakers of the property; and

(g) all other elements of the building necessary or convenient to its existence, maintenance, and safety and normally in common use.

History: En. Sec. 1, Ch. 452, L. 1985.

Cross-References

Unit Ownership Act, Title 70, ch. 23.

15-8-512. Common elements serving residential or commercial development. (1) Each lot in a residential or commercial development, regardless of whether improved or unimproved, is considered a parcel of real property subject to separate assessment and taxation. Each lot owner is assessed on a pro rata basis for elements of the development serving the lots in common, such as recreational areas, pathways, sidewalks, private roads, street lights, main communication cables, main gas or electric lines, community water and sewer systems, or any other common element enumerated in 15-8-511, but not for park areas that serve the lots.

(2) The assessment provisions of subsection (1) are not negated by the existence or formation of a contract between the developer and lot purchasers or an agreement among lot purchasers that would attempt to obligate the developer or an association of lot owners to pay taxes on the common elements.

History: En. Sec. 2, Ch. 452, L. 1985.

Cross-References

Unit Ownership Act, Title 70, ch. 23.

Part 6
Assessment Revision

15-8-601. Assessment revision — conference for review. (1) (a) Except as provided in subsection (1)(b), whenever the department discovers that any taxable property of any person has in any year escaped assessment, been erroneously assessed, or been omitted from taxation, the department may assess the property provided that the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or was omitted from taxation. All revised assessments must be made within 10 years after the end of the calendar year in which the original assessment was or should have been made.

(b) Within the time limits set by 15-23-116, whenever the department discovers property subject to assessment under Title 15, chapter 23, that has escaped assessment, been erroneously assessed, or been omitted from taxation, the department may issue a revised assessment to the person, firm, or corporation who owned the property at the time it escaped assessment, was erroneously assessed, or was omitted from taxation, regardless of the ownership of the property at the time of the department's revised assessment.

(2) When the department proposes to revise the statement reported by the taxpayer under 15-8-301, the action of the department is subject to the notice and conference provisions of this section. Revised assessments of centrally assessed property are subject to review pursuant to 15-1-211.

(3) (a) Notice of revised assessment pursuant to this section must be made by the department by postpaid letter addressed to the person interested within 10 days after the revised assessment has been made. If the property is locally assessed, the notice must include the opportunity for a conference on the matter, at the request of the person interested, within 30 days after notice is given.

(b) An assessment revision review conference is not a contested case as defined in the Montana Administrative Procedure Act. The department shall keep minutes in writing of each assessment revision review conference, and the minutes are public records.

(c) Following an assessment revision review conference or expiration of the opportunity for a conference, the department shall order an assessment that it considers proper. Any party to the conference aggrieved by the action of the department or a taxpayer who does not request a conference may appeal to the county tax appeal board within 30 days of receipt of the revised assessment or the department's assessment made pursuant to the conference.

(4) The department shall enter in the property tax record all changes and corrections made by it.

History: **(1) thru (3), (5)En. Sec. 11, Ch. 3, L. 1923; re-en. Sec. 2122.11, R.C.M. 1935; amd. Sec. 56, Ch. 405, L. 1973; amd. Sec. 4, Ch. 155, L. 1977; Sec. 84-711, R.C.M. 1947; (4)Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2582, Rev. C. 1907; re-en. Sec. 2121, R.C.M. 1921; Cal. Pol. C. Sec. 3682; re-en. Sec. 2121, R.C.M. 1935; amd. Sec. 44, Ch. 405, L. 1973; Sec. 84-610, R.C.M. 1947; R.C.M. 1947, 84-610, 84-711; amd. Sec. 1, Ch. 37, L. 1991; amd. Sec. 5, Ch. 811, L. 1991; amd. Sec. 62, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 36, L. 1997.**

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
State Tax Appeal Board, Title 15, ch. 2.
County Tax Appeal Board, Title 15, ch. 15, part 1.
Failure to file report on centrally assessed property, 15-23-104.
Transmission of statement of revised assessment of centrally assessed property, 15-23-107.

Part 7
Assessment and Map Books

15-8-701. Property tax record — definition — listing property in. (1) Unless the context clearly indicates otherwise, the term "property tax record" means the record that is kept in each county by the department and that contains the information described in subsection (2). The term includes records referred to as an "assessment book" or "assessment roll" and, in a county in which the property tax record is kept on a computer system, the information on the system analogous to the information described in subsection (2).

(2) The department shall prepare a property tax record with appropriate headings, in which must be listed all property within the state and in which must be specified, by an appropriate heading:

(a) the name of the person to whom the property is assessed;

(b) land by description sufficient to identify it, the locality, and the improvements on the land;

(c) all taxable personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail the personal property does not invalidate the assessment;

(d) the assessed value of real estate;

(e) the assessed value of improvements on land, except that land and improvements must be separately listed when required under 15-8-111;

(f) the assessed value of improvements on real estate assessed to persons other than the owners of the real estate. Taxable improvements owned by a person, located upon land exempt from taxation, must, as to the manner of assessment, be assessed as other real estate. A value may not be assessed against the exempt land, and the land may not be charged with and is not responsible for the assessment made against any taxable improvements located on the land.

(g) the assessed value of all taxable personal property;

(h) the school, road, and other revenue districts in which each piece of property assessed is situated;

(i) the total assessed value of all property;

(j) the taxable value of all property;

(k) the taxes and fees assessed against the property; and

(l) the total of each type of tax, levy, and fee.

History: **(1)En. 84-502.1 by Sec. 27, Ch. 405, L. 1973; Sec, 84-502.1, R.C.M. 1947; (2)En. Sec. 34, p. 84, L. 1891; re-en. Sec. 3724, Pol. C. 1895; re-en. Sec. 2543, Rev. C. 1907; re-en. Sec. 2048, R.C.M. 1921; Cal. Pol. C. Sec. 3650; re-en. Sec. 2048, R.C.M. 1935; amd. Sec. 26, Ch. 405, L. 1973; amd. Sec. 2, Ch. 209, 1975; amd. Sec. 3, Ch. 436, L. 1975; amd. Sec. 5, Ch. 126, L. 1977; Sec. 84-501, R.C.M. 1947; R.C.M. 1947, 84-501, 84-502.1; amd. Sec. 1, Ch. 253, L. 1985; amd. Sec. 63, Ch. 27, Sp. L. November 1993.**

Cross-References

Book to show property situated in cities and towns, 7-6-4409.
Tax-exempt property, Title 15, ch. 6, part 2.
Irrigation district assessments added to book, 85-7-2136.
Drainage district assessments added to book, 85-8-601.

15-8-702. Persons desiring to be listed. Lands described on the property tax record do not need to be described a second time, but any person claiming the land and desiring to be assessed for the land may have the person's name inserted with that of the person to whom the land is assessed.

History: En. Sec. 3731, Pol. C. 1895; re-en. Sec. 2550, Rev. C. 1907; re-en. Sec. 2055, R.C.M. 1921; Cal. Pol. C. Sec. 3657; re-en. Sec. 2055, R.C.M. 1935; amd. Sec. 1, Ch. 283, L. 1975; R.C.M. 1947, 84-508; amd. Sec. 2, Ch. 366, L. 1993; amd. Sec. 64, Ch. 27, Sp. L. November 1993.

15-8-703. Repealed. Sec. 1, Ch. 17, L. 1985.

History: (1)En. Sec. 3851, Pol. C. 1895; re-en. Sec. 2615, Rev. C. 1907; re-en. Sec. 2167, R.C.M. 1921; re-en. Sec. 2167, R.C.M. 1935; Sec. 84-4012, R.C.M. 1947; (2)En. Sec. 4019, Pol. C. 1895; re-en. Sec. 2737, Rev. C. 1907; re-en. Sec. 2168, R.C.M. 1921; re-en. Sec. 2168, R.C.M. 1935; amd. Sec. 81, Ch. 405, L. 1973; Sec. 84-4013, R.C.M. 1947; R.C.M. 1947, 84-4012, 84-4013.

15-8-704. Map book. The department shall make maps showing public and private land for each county and shall designate the person to whom the land is assessed.

History: En. Sec. 3727, Pol. C. 1895; re-en. Sec. 2546, Rev. C. 1907; re-en. Sec. 2051, R.C.M. 1921; re-en. Sec. 2051, R.C.M. 1935; amd. Sec. 28, Ch. 405, L. 1973; R.C.M. 1947, 84-504; amd. Sec. 65, Ch. 27, Sp. L. November 1993.

15-8-705. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

History: En. Sec. 37, p. 86, L. 1891; re-en. Sec. 3728, Pol. C. 1895; re-en. Sec. 2547, Rev. C. 1907; re-en. Sec. 2052, R.C.M. 1921; Cal. Pol. C. Sec. 3654; re-en. Sec. 2052, R.C.M. 1935; amd. Sec. 29, Ch. 405, L. 1973; R.C.M. 1947, 84-505.

15-8-706. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

History: (1)En. Sec. 3729, Pol. C. 1895; re-en. Sec. 2548, Rev. C. 1907; re-en. Sec. 2053, R.C.M. 1921; Cal. Pol. C. Sec. 3655; re-en. Sec. 2053, R.C.M. 1935; amd. Sec. 30, Ch. 405, L. 1973; Sec. 84-506, R.C.M. 1947; (2)En. Sec. 3730, Pol. C. 1895; re-en. Sec. 2549, Rev. C. 1907; re-en. Sec. 2054, R.C.M. 1921; Cal. Pol. C. Sec. 3656; re-en. Sec. 2054, R.C.M. 1935; amd. Sec. 31, Ch. 405, L. 1973; Sec. 84-507, R.C.M. 1947; R.C.M. 1947, 84-506, 84-507; amd. Sec. 1, Ch. 225, L. 1983; amd. Sec. 7, Ch. 598, L. 1989.

15-8-707. Correction of defects in property tax record. (1) At any time after the original assessment is made and prior to a sale for delinquent taxes, omissions, errors, or defects in the property tax record may only be corrected by the department.

(2) If the correction involves an assessment of property that is the subject of pending litigation with a taxing jurisdiction within the county, the county attorney must be notified of the correction.

History: En. Sec. 193, p. 127, L. 1891; re-en. Sec. 4010, Pol. C. 1895; re-en. Sec. 2728, Rev. C. 1907; re-en. Sec. 2058, R.C.M. 1921; Cal. Pol. C. Sec. 3881; re-en. Sec. 2058, R.C.M. 1935; amd. Sec. 34, Ch. 405, L. 1973; R.C.M. 1947, 84-511; amd. Sec. 1, Ch. 477, L. 1979; amd. Sec. 2, Ch. 17, L. 1985; amd. Sec. 66, Ch. 27, Sp. L. November 1993.

15-8-708. Omissions in delinquent lists — correction by publication. (1) When the omission, error, or defect has been carried into a delinquent list or any publication, the list or publication may be republished as amended or notice of the correction may be given in a supplementary publication.

(2) The publication must be made in the same manner as the original publication and for not less than 1 week.

History: (1)En. Sec. 194, p. 127, L. 1891; re-en. Sec. 4011, Pol. C. 1895; re-en. Sec. 2729, Rev. C. 1907; re-en. Sec. 2059, R.C.M. 1921; Cal. Pol. C. Sec. 3882; re-en. Sec. 2059, R.C.M. 1935; Sec. 84-512, R.C.M. 1947; (2)En. Sec. 195, p. 127, L. 1891; re-en. Sec. 4012, Pol. C. 1895; re-en. Sec. 2730, Rev. C. 1907; re-en. Sec. 2060, R.C.M. 1921; Cal. Pol. C. Sec. 3883; re-en. Sec. 2060, R.C.M. 1935; Sec. 84-513, R.C.M. 1947; R.C.M. 1947, 84-512, 84-513.

15-8-709. Statement of changes to be sent to county clerk and recorder. The department shall notify each county clerk and recorder of the changes made by the department in the property tax record of the county or any assessment contained in the property tax record, which changes are prima facie evidence of the regularity of all proceedings of the department resulting in the action that is the subject matter of the statement.

History: En. Sec. 12, Ch. 3, L. 1923; re-en. Sec. 2122.12, R.C.M. 1935; amd. Sec. 57, Ch. 405, L. 1973; R.C.M. 1947, 84-712; amd. Sec. 67, Ch. 27, Sp. L. November 1993.

15-8-710. Property tax record prima facie evidence. The property tax record or delinquent list or a copy of either certified by the county treasurer showing unpaid taxes against any person or property is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of the law in relation to the assessment and levy of the taxes have been complied with.

History: En. Sec. 133, p. 115, L. 1891; re-en. Sec. 3900, Pol. C. 1895; re-en. Sec. 2656, Rev. C. 1907; re-en. Sec. 2216, R.C.M. 1921; Cal. Pol. C. Sec. 3789; re-en. Sec. 2216, R.C.M. 1935; R.C.M. 1947, 84-4171; amd. Sec. 3, Ch. 17, L. 1985; amd. Sec. 68, Ch. 27, Sp. L. November 1993.

15-8-711. List of owners of multiple, undivided interests in parcel of land to county treasurer. (1) The department shall furnish to the county treasurer the names and, if available, the addresses of the owners of each multiple, undivided interest in a parcel of land located within the county. The department shall inform the county treasurer that the list of names may not include every owner of the parcel of land.

(2) If a parcel of land with undivided interests is located within the boundaries of a federally recognized Indian reservation, a copy of the notice of classification and appraisal shall be provided to the tribe or tribes governing the reservation. The department and the tribe may agree on a different procedure which provides the equivalent information to the tribal government.

History: En. Sec. 2, Ch. 444, L. 2001.

Compiler's Comments

Effective Date: Section 6, Ch. 444, L. 2001, provided that this section is effective on passage and approval. Approved April 30, 2001.

Retroactive Applicability: Section 7, Ch. 444, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

CHAPTER 9

EQUALIZATION

Part 1 — General Provisions

15-9-101. Department to equalize valuations — hearing.
15-9-102. Repealed.
15-9-103. Department to use records in equalizing.

Chapter Cross-References

Property tax administration, Art. VIII, sec. 3, Mont. Const.

Equal valuation, Art. VIII, sec. 4, Mont. Const.

Part 1

General Provisions

Part Cross-References

Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

15-9-101. Department to equalize valuations — hearing. (1) The department shall adjust and equalize the valuation of taxable property among the several counties, between the different classes of taxable property in any county and in the several counties, and between individual taxpayers and shall do all things necessary to secure a fair, just, and equitable valuation of all taxable property among counties, between the different classes of property, and between individual taxpayers.

(2) The department may hold a public hearing to determine the value of any class of property in any county and may raise or lower the value of any class of property on the basis of testimony at the hearing.

(3) At the hearing, the department may subpoena witnesses and hear and take evidence as in its discretion it considers proper.

History: (1)En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; Sec. 84-708.1, R.C.M. 1947; (2)En. Sec. 4, Ch. 187, L. 1933; re-en. Sec. 2116.1, R.C.M. 1935; amd. Sec. 40, Ch. 405, L. 1973; Sec. 84-605, R.C.M. 1947; (3)Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2576, Rev. C. 1907; re-en. Sec. 2117, R.C.M. 1921; Cal. Pol. C. Sec. 3676; re-en. Sec. 2117, R.C.M. 1935; amd. Sec. 6, Ch. 516, L.

1973; Sec. 84-606, R.C.M. 1947; R.C.M. 1947, 84-605, 84-606, 84-708.1(3); amd. Sec. 69, Ch. 27, Sp. L. November 1993.

Cross-References

Applicable to assessment of property in cities and towns, 7-6-4411.

15-9-102. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

History: En. Sec. 3785, Pol. C. 1895; re-en. Sec. 2577, Rev. C. 1907; amd. Sec. 1, Ch. 53, L. 1921; re-en. Sec. 2118, R.C.M. 1921; Cal. Pol. C. Sec. 3677; re-en. Sec. 2118, R.C.M. 1935; amd. Sec. 1, Ch. 102, L. 1951; amd. Sec. 41, Ch. 405, L. 1973; R.C.M. 1947, 84-607.

15-9-103. Department to use records in equalizing. The department shall use the abstract and all other information it may gain from the records of the county clerk and recorder or elsewhere in equalizing the assessment of the property of each county and shall enter in the property tax record any property that has not been assessed.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2580, Rev. C. 1907; re-en. Sec. 2119, R.C.M. 1921; Cal. Pol. C. Sec. 3679; re-en. Sec. 2119, R.C.M. 1935; amd. Sec. 42, Ch. 405, L. 1973; R.C.M. 1947, 84-608; amd. Sec. 70, Ch. 27, Sp. L. November 1993.

CHAPTER 10

PROPERTY TAX LEVIES

Part 1 — Statewide Levies

15-10-101. Repealed.
15-10-102. Repealed.
15-10-103. Repealed.
15-10-104. Repealed.
15-10-105. Terminated.
15-10-106. Terminated.
15-10-107. Tax levy for university system.

Part 2 — Statement of Levies

15-10-201. Tax levies to be made in mills and tenths and hundredths of mills.
15-10-202. Certification of taxable values.
15-10-203. Increase of tax revenue — advertisement of intention and public hearing required.
15-10-204. Repealed.
15-10-205. Repealed.
15-10-206. Notification of decisions of tax appeal boards.
15-10-207. Repealed.
15-10-208. Repealed.

Part 3 — Entry of Taxes

15-10-301 through 15-10-304. Repealed.
15-10-305. Clerk and recorder to report mill levy — department to compute and enter taxes.
15-10-306. Repealed.
15-10-307. Repealed.
15-10-308. Repealed.
15-10-309 through 15-10-320 reserved.
15-10-321. Limitation on levy and computation of tax — new taxing jurisdictions.

Part 4 — Limitation on Property Taxes

15-10-401. Declaration of policy.
15-10-402. Property tax limited to 1996 levels.
15-10-403 through 15-10-405 reserved.
15-10-406. Limitation of applicability.
15-10-407 through 15-10-410 reserved.
15-10-411. Repealed.
15-10-412. Repealed.
15-10-413 through 15-10-419 reserved.
15-10-420. Procedure for calculating levy.
15-10-421 through 15-10-424 reserved.
15-10-425. Mill levy election.

Chapter Cross-References

Tax purposes, Art. VIII, sec. 1, Mont. Const.
Property tax administration, Art. VIII, sec. 3, Mont. Const.
Equal valuation, Art. VIII, sec. 4, Mont. Const.
Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

Part 1
Statewide Levies

15-10-101. Repealed. Sec. 7, Ch. 123, L. 1997.

History: En. Sec. 80, p. 104, L. 1891; amd. Sec. 3820, Pol. C. 1895; re-en. Sec. 2593, Rev. C. 1907; re-en. Sec. 2147, R.C.M. 1921; re-en. Sec. 2147, R.C.M. 1935; R.C.M. 1947, 84-3801.

15-10-102. Repealed. Sec. 7, Ch. 123, L. 1997.

History: En. Sec. 3824, Pol. C. 1895; re-en. Sec. 2597, Rev. C. 1907; re-en. Sec. 2149, R.C.M. 1921; Cal. Pol. C. Sec. 3713; re-en. Sec. 2149, R.C.M. 1935; amd. Sec. 147, Ch. 516, L. 1973; amd. Sec. 2, Ch. 345, L. 1977; R.C.M. 1947, 84-3803.

15-10-103. Repealed. Sec. 56, Ch. 767, L. 1991.

History: En. Sec. 84, p. 105, L. 1891; re-en. Sec. 3830, Pol. C. 1895; re-en. Sec. 2603, Rev. C. 1907; re-en. Sec. 2155, R.C.M. 1921; Cal. Pol. C. Sec. 3719; re-en. Sec. 2155, R.C.M. 1935; R.C.M. 1947, 84-3810.

15-10-104. Repealed. Sec. 7, Ch. 123, L. 1997.

History: En. Sec. 3826, Pol. C. 1895; re-en. Sec. 2599, Rev. C. 1907; re-en. Sec. 2151, R.C.M. 1921; Cal. Pol. C. Sec. 3715; re-en. Sec. 2151, R.C.M. 1935; amd. Sec. 148, Ch. 516, L. 1973; R.C.M. 1947, 84-3806.

15-10-105. Terminated. Sec. 2, Ch. 582, L. 1979.

History: En. Sec. 1, Ch. 582, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

15-10-106. Terminated. Sec. 3, Ch. 588, L. 1989.

History: En. Sec. 1, Ch. 588, L. 1989.

15-10-107. *(Temporary)* **Tax levy for university system.** Subject to the provisions of 15-10-420, there is levied upon the taxable value of all real estate and personal property subject to taxation in the state of Montana 6 mills or so much of 6 mills as is necessary to raise the amount appropriated by the legislature from the state special revenue fund for the support, maintenance, and improvement of the Montana university system, as provided in referendum measure No. 113, passed by a vote of the people at the general election held November 3, 1998. The funds raised from the levy must be deposited in the state special revenue fund. *(Terminates January 1, 2009—sec. 6, Ch. 408, L. 1999.)*

History: En. Sec. 1, Ch. 408, L. 1999; amd. Sec. 166, Ch. 584, L. 1999.

Part 2
Statement of Levies

Part Cross-References

Resort tax, Title 7, ch. 6, part 15.

15-10-201. Tax levies to be made in mills and tenths and hundredths of mills. Every board of county commissioners, city or town council or commission, and every other board or commission authorized by law to make or fix tax levies for any purpose shall make and fix every such levy in mills and tenths and hundredths of mills.

History: En. Sec. 1, Ch. 123, L. 1935; re-en. Sec. 2148.1, R.C.M. 1935; R.C.M. 1947, 84-3802.

15-10-202. *(Temporary)* **Certification of taxable values.** (1) Subject to subsections (2) and (3), by the second Monday in July, the department shall certify to each taxing authority the total taxable value within the jurisdiction of the taxing authority. The department shall also send to each taxing authority a written statement of its best estimate of the total taxable value of newly taxable property, as described in 15-10-420(3).

(2) For tax years beginning after December 31, 2000, if the ownership of centrally assessed property has been transferred in whole or in part to a different owner and the transferred property has a market value of $1 million or more as determined by the department, the department shall determine separately the taxable value of newly taxable property and the taxable value associated with reappraisal of centrally assessed property that is transferred to a

different owner. The department shall certify to each taxing authority, at the time specified in subsection (1), the taxable value of newly taxable property and the total taxable value of centrally assessed property, exclusive of newly taxable property, that has been transferred to a different owner.

(3) For tax year 2001, for property that was classified as class thirteen property in tax year 2000 and that was transferred in whole or in part to a different owner in tax year 1999, if the transferred property has a market value of $1 million or more as determined by the department, the department shall determine separately the taxable value of newly taxable property and the taxable value associated with reappraisal of class thirteen property that was transferred to a different owner. The department shall recertify, at the time specified in subsection (1), to each taxing authority that had class thirteen property described in this subsection (3) in tax year 2000 the recertified total taxable value of newly taxable property. *(Terminates January 1, 2002—sec. 9, Ch. 419, L. 2001.)*

15-10-202. *(Effective January 1, 2002)* **Certification of taxable values.** (1) Subject to subsection (2), by the second Monday in July, the department shall certify to each taxing authority the total taxable value within the jurisdiction of the taxing authority. The department shall also send to each taxing authority a written statement of its best estimate of the total taxable value of newly taxable property, as described in 15-10-420(3).

(2) For tax years beginning after December 31, 2000, if the ownership of centrally assessed property has been transferred in whole or in part to a different owner and the transferred property has a market value of $1 million or more as determined by the department, the department shall determine separately the taxable value of newly taxable property and the taxable value associated with reappraisal of centrally assessed property that is transferred to a different owner. The department shall certify to each taxing authority, at the time specified in subsection (1), the taxable value of newly taxable property and the total taxable value of centrally assessed property, exclusive of newly taxable property, that has been transferred to a different owner.

History: En. 84-7202 by Sec. 2, Ch. 286, L. 1974; R.C.M. 1947, 84-7202; amd. Sec. 4, Ch. 726, L. 1985; amd. Sec. 5, Ch. 26, Sp. L. June 1986; amd. Sec. 2, Ch. 9, L. 1989; amd. Sec. 71, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 26, L. 2001; amd. Sec. 2, Ch. 419, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 26 in first sentence before "taxable" inserted "total" and at end of second sentence after "total" substituted "taxable value of newly taxable property, as described in 15-10-420(3)" for "assessed value of all new construction and improvements not included on the previous property tax record and the value of deletions from the previous property tax record. Exclusive of new construction, improvements, and deletions, the department shall certify to each taxing authority a millage rate that will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department shall use 95% of the taxable value appearing on the property tax record, exclusive of properties appearing for the first time in the property tax record". Amendment effective July 1, 2001.

Chapter 419 at beginning of first sentence of (1) inserted "Subject to subsections (2) and (3)", at end of second sentence substituted "taxable value of newly taxable property, as described in 15-10-420(3)" for "assessed value of all new construction and improvements not included on the previous property tax record and the value of deletions from the previous property tax record", and deleted former third and fourth sentences that read: "Exclusive of new construction, improvements, and deletions, the department shall certify to each taxing authority a millage rate that will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department shall use 95% of the taxable value appearing on the property tax record, exclusive of properties appearing for the first time in the property tax record"; inserted (2) concerning centrally assessed property; inserted (3) concerning class thirteen property; and made minor changes in style. Amendment effective April 28, 2001. Subsection (3) terminates January 1, 2002.

Recalculation of Mill Levies: Section 5, Ch. 419, L. 2001, provided: "Certain governmental entities to recalculate mill levy. (1) (a) If the taxable value of all property, exclusive of the recertified value of newly taxable property as determined under 15-10-202(3), is more than 101% of the total taxable value of all property originally certified, exclusive of newly taxable property, by the department in tax year 2000 to the governmental entity authorized to impose mills, the governmental entity shall recalculate the mill levy under 15-10-420(1) for tax year 2000. The governmental entity shall not recalculate taxes for tax year 2000.

(b) The governmental entity shall then multiply the total taxable value in tax year 2000 by the mill levy determined under subsection (1)(a). The governmental entity shall use that amount as the amount of property tax that was actually generated in tax year 2000.

(2) For the purpose of 15-10-420(1), the amount of property tax actually generated in tax year 2000 as determined in subsection (1)(b) is the amount that must be used by the governmental entity for imposing mills in tax year 2001." Effective April 28, 2001, and terminates January 1, 2002.

Retroactive Applicability: Section 8, Ch. 419, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

15-10-203. Increase of tax revenue — advertisement of intention and public hearing required. (1) A local taxing authority may not budget an increased amount of ad valorem tax revenue in excess of the property tax revenue of the previous fiscal year exclusive of revenue from ad valorem taxation on properties appearing for the first time on the property tax record unless it adopts a resolution to budget additional property tax revenue. Prior to adoption of the resolution, the taxing authority shall hold a public hearing for the purpose of receiving comments on its intention to budget increased property tax revenue. The taxing authority shall advertise notice of the public hearing as specified in subsection (2). The public hearing may be held in conjunction with the tentative budget hearing or any other budget hearing that may be required by law.

(2) The taxing authority shall advertise its intent to budget an increase in property tax revenue in a newspaper meeting the requirements of 7-1-4127, except that the newspaper may not be primarily in the business of publishing legal advertisements. If there is not a newspaper in the county, in addition to being posted as required in 7-1-4127, the advertisement must be published in one or more newspapers of general circulation widely subscribed to by the residents of the county. The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement must meet the notice requirements of 7-1-4127. The advertisement must be published with at least the following information:

"NOTICE OF BUDGET INCREASE FROM PROPERTY TAXES

The (name of the taxing authority) intends to budget an increase in revenue from property taxation by (percentage of increase in property tax revenue from previous fiscal year) percent.

All concerned persons are invited to attend a public hearing on budgeting the increased property tax revenue to be held on (date and time) at (meeting place).

A decision on budgeting the increased property tax revenue will be made after considering comments made at this hearing.

For further information please contact: (name, address, and phone number of person who can be contacted for further information)."

History: En. 84-7203 by Sec. 3, Ch. 286, L. 1974; R.C.M. 1947, 84-7203; amd. Sec. 6, Ch. 581, L. 1979; amd. Sec. 39, Ch. 370, L. 1987; amd. Sec. 1, Ch. 817, L. 1991; amd. Sec. 72, Ch. 27, Sp. L. November 1993; amd. Sec. 67, Ch. 430, L. 1995; amd. Sec. 68, Ch. 354, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 354 in (2) at end of fourth sentence substituted "7-1-4127" for "7-1-4128". Amendment effective October 1, 2001.

15-10-204. Repealed. Sec. 4, Ch. 26, L. 2001; Sec. 6, Ch. 419, L. 2001.

History: En. 84-7204 by Sec. 4, Ch. 286, L. 1974; amd. Sec. 2, Ch. 354, L. 1977; R.C.M. 1947, 84-7204; amd. Sec. 7, Ch. 581, L. 1979; amd. Sec. 40, Ch. 370, L. 1987; amd. Sec. 90, Ch. 584, L. 1999.

15-10-205. Repealed. Sec. 4, Ch. 26, L. 2001; Sec. 6, Ch. 419, L. 2001.

History: En. 84-7205 by Sec. 5, Ch. 286, L. 1974; R.C.M. 1947, 84-7205; amd. Sec. 73, Ch. 27, Sp. L. November 1993; amd. Sec. 91, Ch. 584, L. 1999.

15-10-206. Notification of decisions of tax appeal boards. The department shall notify each taxing authority of any change in the property tax record that results from actions by the state or county tax appeal boards.

History: En. 84-7206 by Sec. 6, Ch. 286, L. 1974; R.C.M. 1947, 84-7206; amd. Sec. 3, Ch. 9, L. 1989; amd. Sec. 74, Ch. 27, Sp. L. November 1993; amd. Sec. 3, Ch. 26, L. 2001; amd. Sec. 3, Ch. 419, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapters 26 and 419 deleted former second sentence that read: "An increase in the taxing authority's millage above the millage certified by the department or adopted by resolution or ordinance of the governing body of the taxing authority that is required solely by a reduction of the property tax record by the state or county tax appeal board may be adopted without further notice." Amendments effective July 1, 2001, and April 28, 2001, respectively.

Retroactive Applicability: Section 8, Ch. 419, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

Cross-References

State Tax Appeal Board, Title 15, ch. 2.
County Tax Appeal Board, Title 15, ch. 15, part 1.

15-10-207. Repealed. Sec. 4, Ch. 26, L. 2001; Sec. 6, Ch. 419, L. 2001.

History: En. 84-7207 by Sec. 7, Ch. 286, L. 1974; R.C.M. 1947, 84-7207; amd. Sec. 8, Ch. 581, L. 1979.

15-10-208. Repealed. Sec. 4, Ch. 26, L. 2001; Sec. 6, Ch. 419, L. 2001.

History: En. 84-7208 by Sec. 8, Ch. 286, L. 1974; R.C.M. 1947, 84-7208; amd. Sec. 9, Ch. 581, L. 1979.

Part 3
Entry of Taxes

15-10-301 through 15-10-304. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

Compiler's Comments

Histories of Repealed Sections:

15-10-301. En. Sec. 85, p. 105, L. 1891; re-en. Sec. 3840, Pol. C. 1895; re-en. Sec. 2604, Rev. C. 1907; re-en. Sec. 2156, R.C.M. 1921; Cal. Pol. C. Sec. 3727; re-en. Sec. 2156, R.C.M. 1935; amd. Sec. 1, Ch. 167, L. 1943; amd. Sec. 76, Ch. 405, L. 1973; R.C.M. 1947, 84-4001.

15-10-302. En. Sec. 86, p. 105, L. 1891; re-en. Sec. 3841, Pol. C. 1895; re-en. Sec. 2605, Rev. C. 1907; re-en. Sec. 2157, R.C.M. 1921; Cal. Pol. C. Sec. 3728; re-en. Sec. 2157, R.C.M. 1935; amd. Sec. 77, Ch. 405, L. 1973; amd. Sec. 7, Ch. 126, L. 1977; R.C.M. 1947, 84-4002.

15-10-303. En. Sec. 87, p. 105, L. 1891; re-en. Sec. 3842, Pol. C. 1895; re-en. Sec. 2606, Rev. C. 1907; re-en. Sec. 2158, R.C.M. 1921; Cal. Pol. C. Sec. 3729; re-en. Sec. 2158, R.C.M. 1935; amd. Sec. 149, Ch. 516, L. 1973; R.C.M. 1947, 84-4003.

15-10-304. En. Sec. 88, p. 106, L. 1891; re-en. Sec. 3843, Pol. C. 1895; re-en. Sec. 2607, Rev. C. 1907; re-en. Sec. 2159, R.C.M. 1921; Cal. Pol. C. Sec. 3730; re-en. Sec. 2159, R.C.M. 1935; amd. Sec. 1, Ch. 86, L. 1929; amd. Sec. 78, Ch. 405, L. 1973; R.C.M. 1947, 84-4004; amd. Sec. 2, Ch. 357, L. 1985.

15-10-305. Clerk and recorder to report mill levy — department to compute and enter taxes. (1) (a) The county clerk and recorder shall by the third Monday in August notify the department of the number of mills needed to be levied for each taxing jurisdiction in the county. Except as provided in subsection (1)(b), the department shall compute the taxes by multiplying the number of mills times the taxable value of the property to be taxed and shall add any fees or assessments required to be levied against a person owning property. All taxes, fees, and assessments must be itemized for the property listed in the property tax record.

(b) In conveyances that result in a land split, the taxes must be based on the property as assessed on January 1 preceding the conveyance. The department is not required to include the name of the new owner in the computation of the amount of taxes, fees, and assessments to be levied against property that is part of a land conveyance if including the new owner's name would cause the department to violate the deadline provided in subsection (2).

(2) The department shall complete the computation of the amount of taxes, fees, and assessments to be levied against the property and shall notify the county clerk and recorder and the county treasurer by the second Monday in October.

History: En. Sec. 89, p. 106, L. 1891; re-en. Sec. 3844, Pol. C. 1895; re-en. Sec. 2608, Rev. C. 1907; re-en. Sec. 2160, R.C.M. 1921; Cal. Pol. C. Sec. 3731; re-en. Sec. 2160, R.C.M. 1935; amd. Sec. 3, Ch. 167, L. 1943; amd. Sec. 79, Ch. 405, L. 1973; R.C.M. 1947, 84-4005; amd. Sec. 75, Ch. 27, Sp. L. November 1993; amd. Sec. 4, Ch. 414, L. 1997.

15-10-306. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

History: (1)En. Sec. 90, p. 107, L. 1891; re-en. Sec. 3845, Pol. C. 1895; re-en. Sec. 2609, Rev. C. 1907; re-en. Sec. 2161, R.C.M. 1921; Cal. Pol. C. Sec. 3732; amd. Sec. 9, Ch. 96, L. 1923; re-en. Sec. 2161, R.C.M. 1935; amd. Sec. 2, Ch. 167, L. 1943; amd. Sec. 80, Ch. 405, L. 1973; Sec. 84-4006, R.C.M. 1947; (2)En. Sec. 93, p. 107, L. 1891; re-en. Sec. 3848, Pol. C. 1895; re-en. Sec. 2612, Rev. C. 1907; re-en. Sec. 2164, R.C.M. 1921; Cal. Pol. C. Sec. 3735; re-en. Sec. 2164, R.C.M. 1935; Sec. 84-4008, R.C.M. 1947; R.C.M. 1947, 84-4006, 84-4008.

15-10-307. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

History: En. Sec. 92, p. 107, L. 1891; re-en. Sec. 3847, Pol. C. 1895; re-en. Sec. 2611, Rev. C. 1907; re-en. Sec. 2163, R.C.M. 1921; Cal. Pol. C. Sec. 3734; amd. Sec. 10, Ch. 96, L. 1923; re-en. Sec. 2163, R.C.M. 1935; amd. Sec. 4, Ch. 167, L. 1943; R.C.M. 1947, 84-4007.

15-10-308. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

History: En. Sec. 94, p. 107, L. 1891; re-en. Sec. 3849, Pol. C. 1895; re-en. Sec. 2613, Rev. C. 1907; re-en. Sec. 2165, R.C.M. 1921; Cal. Pol. C. Sec. 3736; amd. Sec. 11, Ch. 96, L. 1923; re-en. Sec. 2165, R.C.M. 1935; R.C.M. 1947, 84-4009.

15-10-309 through 15-10-320 reserved.

15-10-321. Limitation on levy and computation of tax — new taxing jurisdictions. The department of revenue may not be required to levy or compute a tax for any new taxing jurisdiction created or for any change in an existing jurisdiction unless formally notified of its creation or change by January 1 of the year in which the taxes are to be levied.

History: En. 84-3811 by Sec. 1, Ch. 349, L. 1977; R.C.M. 1947, 84-3811; amd. Sec. 1, Ch. 76, L. 1981.

Part 4
Limitation on Property Taxes

15-10-401. Declaration of policy. (1) The state of Montana's reliance on the taxation of property to support education and local government has placed an unreasonable burden on the owners of all classes of property described in Title 15, chapter 6, part 1.

(2) Except as provided in 15-10-420, the people of the state of Montana declare that it is the policy of the state of Montana that no further property tax increases be imposed on property. In order to reduce volatility in property taxation and in order to reduce taxpayer uncertainty, it is the policy of the legislature to develop alternatives to market value for purposes of taxation.

History: En. Sec. 1, I.M. No. 105, approved Nov. 4, 1986; amd. Sec. 5, Ch. 463, L. 1997; amd. Sec. 92, Ch. 584, L. 1999.

15-10-402. Property tax limited to 1996 levels. Except as provided in 15-10-420, the amount of taxes levied on property described in Title 15, chapter 6, part 1, may not, for any taxing jurisdiction, exceed the amount levied for tax year 1996.

History: En. Sec. 2, I.M. No. 105, approved Nov. 4, 1986; amd. Sec. 6, Ch. 10, Sp. L. June 1989; amd. Sec. 2, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 745, L. 1991; amd. Sec. 11, Ch. 773, L. 1991; amd. Sec. 7, Ch. 267, L. 1993; amd. Sec. 6, Ch. 463, L. 1997; amd. Sec. 93, Ch. 584, L. 1999.

15-10-403 through 15-10-405 reserved.

15-10-406. Limitation of applicability. The minimum tax imposed by 15-16-118 is not affected by the provisions of this part.

History: En. Sec. 2, Ch. 474, L. 1991.

15-10-407 through 15-10-410 reserved.

15-10-411. Repealed. Sec. 14, Ch. 463, L. 1997.

History: En. Sec. 1, Ch. 654, L. 1987.

15-10-412. Repealed. Sec. 171, Ch. 584, L. 1999.

History: En. Sec. 2, Ch. 654, L. 1987; amd. Sec. 2, Ch. 213, L. 1989; amd. Sec. 3, Ch. 636, L. 1989; amd. Sec. 1, Ch. 662, L. 1989; amd. Sec. 1, Ch. 5, Sp. L. June 1989; amd. Sec. 1, Ch. 6, Sp. L. June 1989; amd. Sec. 1, Ch. 7, Sp. L. June 1989; amd. Sec. 3, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 668, L. 1991; amd. Sec. 9, Ch. 680, L. 1991; amd. Sec. 4, Ch. 745, L. 1991; amd. Sec. 12, Ch. 773, L. 1991; amd. Sec. 8, Ch. 267, L. 1993; amd. Sec. 20, Ch. 333, L. 1993; amd. Sec. 1, Ch. 424, L. 1993; amd. Sec. 1, Ch. 483, L. 1993; amd. Sec. 30, Ch. 561, L. 1993; amd. Sec. 6, Ch. 573, L. 1993; amd. Sec. 1, Ch. 300, L. 1997; amd. Sec. 7, Ch. 463, L. 1997.

15-10-413 through 15-10-419 reserved.

15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) For purposes of this section, newly taxable property includes:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property; and

(e) transfer of property from tax-exempt to taxable status.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

(b) For the purpose of subsection (3)(d), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonagricultural land as described in 15-6-133(1)(c).

(c) For the purposes of this section, newly taxable property does not include an increase in appraised value of land that was previously valued at 75% of the value of improvements on the land, as provided in 15-7-111(4) and (5), as those subsections applied on December 31, 2001.

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; or

(b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316 or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402; or

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit.

History: En. Sec. 1, Ch. 584, L. 1999; amd. Secs. 6, 16(1), Ch. 11, Sp. L. May 2000; amd. Sec. 1, Ch. 191, L. 2001; amd. Sec. 1, Ch. 220, L. 2001; amd. Sec. 3, Ch. 361, L. 2001; amd. Sec. 3, Ch. 511, L. 2001; amd. Sec. 7, Ch. 571, L. 2001; amd. Sec. 94, Ch. 574, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 191 in (5)(a) near middle after "collected on light vehicles" substituted "61-3-560 through 61-3-562" for "61-3-561" and at end after "and distributed under" substituted "61-3-509(1)(b)" for "61-3-509(2)"; and made minor changes in style. Amendment effective April 3, 2001. The amendment by Ch. 574 rendered the amendment by Ch. 191 void.

Chapter 220 at beginning of (5) inserted "Subject to subsection (8)" and at end substituted "school district levies established in Title 20" for "school district general fund levies and the school district levy for tuition obligations established in 20-5-324(5)"; and made minor changes in style. Amendment effective April 11, 2001.

Chapter 361 inserted (1)(b) concerning imposing less than maximum levy and carryforward of levy authority; in (2), (5), (6), and (7) substituted reference to subsection (1)(a) for reference to subsection (1); and made minor changes in style. Amendment effective October 1, 2001.

Chapter 511 inserted (5)(b) exempting increases in local government's property tax levy for the employer's premium contributions for group health insurance benefits from the mill levy calculation limitation; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 571 in (8) in first sentence at end substituted "53-2-322" (now repealed) for "53-2-813". Amendment effective July 1, 2001.

Chapter 574 in (1)(a) at beginning of first sentence inserted "Subject to the provisions of this section" and at end substituted "plus one-half of the average rate of inflation for the prior 3 years" for "even if that levy is greater than the levy established by law" and near end of second sentence after "less the" inserted "current year's" and at end inserted "plus one-half of the average rate of inflation for the prior 3 years"; inserted (1)(b) concerning carryforward of levy authority; inserted (1)(c) concerning inflation calculation; in (2) after "voters" inserted "as provided in 15-10-425"; deleted former (3)(e) that read: "(e) reclassification of property"; deleted former (3)(g) that read: "(g) revaluations caused by expansion, addition, replacement, or remodeling of improvements"; inserted (4) concerning newly taxable property; at end of (5)(a) inserted "or 20-6-413" (amendment rendered void by Ch. 220); deleted former (5)(a) that read: "(a) include registration fees imposed on light vehicles under 61-3-561 and distributed under 61-3-509(2)"; deleted former (6) that read: "(6) In determining the maximum number of mills in subsection (1), the governmental entity shall take into account any change from the prior year in the amount of statutory reimbursements for changes in the property tax laws. The amount of motor vehicle disposition under 61-3-509(2), as that section read on December 31, 2000, is an increased statutory reimbursement. It may increase the number of mills to account for a decrease in reimbursements and shall decrease the number of mills to fully account for any increase in reimbursements"; inserted (7) concerning increase in mills to offset decrease in reimbursements; in (8) near beginning of first sentence after "calculate" inserted "on a statewide basis" and at end deleted reference to 53-2-813 and inserted third and fourth sentences concerning calculation in whole mills; inserted (9) concerning levies not subject to subsection (1) and not included in amount assessed in a subsequent year; and made minor changes in style. Amendment effective July 1, 2001.

The amendments to this section in sec. 4, Ch. 419, L. 2001, were rendered void by sec. 255(11), Ch. 574, L. 2001, a coordination section.

Applicability: Section 6, Ch. 220, L. 2001, provided: "[This act] applies to school district budgets for the fiscal year beginning July 1, 2001."

2000 Amendment: Section 16(1), Ch. 11, inserted (5)(a) concerning registration fees on light vehicles; in (6) inserted second sentence concerning motor vehicle disposition as an increased statutory reimbursement; and made minor changes in style. Amendment effective January 1, 2001.

The amendments to this section made by sec. 6, Ch. 11, Sp. L. May 2000, were rendered void by sec. 16(1), Ch. 11, Sp. L. May 2000, a coordination instruction.

15-10-421 through 15-10-424 reserved.

15-10-425. Mill levy election. (1) A county, consolidated government, incorporated city, incorporated town, school district, or other taxing entity may impose a new mill levy, increase a mill levy that is required to be submitted to the electors, or exceed the mill levy limit provided for in 15-10-420 by conducting an election as provided in this section.

(2) An election conducted pursuant to this section may be held in conjunction with a regular or primary election or may be a special election. The governing body shall pass a resolution, shall amend its self-governing charter, or must receive a petition indicating an intent to impose a new levy, increase a mill levy, or exceed the current statutory mill levy provided for in 15-10-420 on the approval of a majority of the qualified electors voting in the election. The resolution, charter amendment, or petition must include:

(a) the specific purpose for which the additional money will be used;

(b) the specific amount to be raised;

(c) the approximate number of mills required; and

(d) the durational limit, if any, on the levy.

(3) Notice of the election must be prepared by the governing body and given as provided by law. The form of the ballot must reflect the content of the resolution or charter amendment and must include a statement of the impact of the election on a home valued at $100,000 and a home valued at $200,000 in the district in terms of actual dollars in additional property taxes that would be imposed on residences with those values if the mill levy were to pass. The ballot may

also include a statement of the impact of the election on homes of any other value in the district, if appropriate.

(4) If the majority voting on the question are in favor of the additional levy, the governing body is authorized to impose the levy in the amount specified in the resolution or charter amendment.

History: En. Sec. 1, Ch. 495, L. 2001; en. Sec. 2, Ch. 574, L. 2001.

Compiler's Comments

Dual Enactment — Composite Section: This section was enacted by Ch. 495 and 574, L. 2001. As enacted, the sections differed in several respects and were composited by making the following changes to the version enacted by Ch. 495 to conform to the language in the version enacted by Ch. 574: in (1) substituted "entity may impose a new mill levy" for "entity that proposes to impose a mill levy" and substituted "or exceed the mill levy limit provided for in 15-10-420 by conducting an election" for "shall conduct the election"; in (2) in second sentence after "resolution" inserted "amend its self-governing charter" and inserted "or exceed the current statutory mill levy provided for in 15-10-420" and in last sentence after "resolution" inserted "charter amendment"; in (3) in second sentence after "resolution" inserted "or charter amendment"; in (4) at end inserted "or charter amendment"; and made minor changes in style.

Effective Dates: Section 1, Ch. 495, L. 2001, was effective October 1, 2001.

Section 256(1), Ch. 574, L. 2001, provided that this section is effective July 1, 2001.

CHAPTERS 11 THROUGH 14
RESERVED

CHAPTER 15
PROPERTY TAX APPEALS

Part 1 — County Tax Appeal Board

15-15-101. County tax appeal board — meetings and compensation.
15-15-102. Application for reduction in valuation.
15-15-103. Examination of applicant — failure to hear application.
15-15-104. Appeal to state tax appeal board.
15-15-105. Repealed.
15-15-106. Repealed.

Part 2 — Motor Vehicle Appeals

15-15-201. Motor vehicle tax appeals — payment and protest of local option taxes or fees in lieu of tax on motor vehicles.

Chapter Cross-References

Tax appeals, Art. VIII, sec. 7, Mont. Const.

State Tax Appeal Board, Title 15, ch. 2.

Appeal by person aggrieved by state debt collection procedure, 17-4-111.

Part 1
County Tax Appeal Board

15-15-101. County tax appeal board — meetings and compensation. (1) The board of county commissioners of each county shall appoint a three-member county tax appeal board, with the members to serve staggered terms of 3 years each. The members of each county tax appeal board must be residents of the county in which they serve. The members receive compensation of $45 a day and travel expenses, as provided for in 2-18-501 through 2-18-503, only when the county tax appeal board meets to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation must be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards must be furnished by the county. All other incidental expenses must be paid from the appropriation of the state tax appeal board.

(2) The county tax appeal board shall hold an organizational meeting each year on the date of its first scheduled hearing, immediately before conducting the business for which the hearing was otherwise scheduled. It shall continue in session from July 1 of the current tax year until December 31 of the current tax year to hear protests concerning assessments made by the department until the business of hearing protests is disposed of and, as provided in 15-2-201, may meet after December 31.

(3) In connection with an appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. Upon notification by the county tax appeal board, the county clerk and recorder shall publish a notice to taxpayers, giving the time the county tax appeal board will be in session to hear scheduled protests concerning assessments and the latest date the county tax appeal board may take applications for the hearings. The notice must be published in a newspaper if any is printed in the county or, if none, then in the manner that the county tax appeal board directs. The notice must be published by May 15 of the current tax year.

(4) Challenges to a department rule governing the assessment of property or to an assessment procedure apply only to the taxpayer bringing the challenge and may not apply to all similarly situated taxpayers unless an action is brought in the district court as provided in 15-1-406.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2572, Rev. C. 1907; re-en. Sec. 2113, R.C.M. 1921; Cal. Pol. C. Sec. 3672; re-en. Sec. 2113, R.C.M. 1935; amd. Sec. 36, Ch. 405, L. 1973; amd. Sec. 1, Ch. 38, L. 1974; amd. Sec. 1, Ch. 285, L. 1975; amd. Sec. 1, Ch. 355, L. 1977; amd. Sec. 25, Ch. 453, L. 1977; R.C.M. 1947, 84-601; amd. Sec. 1, Ch. 630, L. 1979; amd. Sec. 2, Ch. 502, L. 1981; amd. Sec. 5, Ch. 526, L. 1981; amd. Sec. 1, Ch. 216, L. 1983; amd. Sec. 13, Ch. 526, L. 1983; amd. Sec. 1, Ch. 242, L. 1991; amd. Sec. 9, Ch. 594, L. 1993; amd. Sec. 76, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 56, L. 1999.

Cross-References

Appeal on increase of value over owner's statement, 15-1-404.

No reduction allowed on assessment of concealed property, 15-8-306.

15-15-102. Application for reduction in valuation. The valuation of property may not be reduced by the county tax appeal board unless either the taxpayer or the taxpayer's agent makes and files a written application for reduction with the county tax appeal board. The application for reduction may be obtained at the local appraisal office or from the county tax appeal board. The completed application must be submitted to the county clerk and recorder. The date of receipt is the date stamped on the appeal form by the county clerk and recorder upon receipt of the form. The county tax appeal board is responsible for obtaining the applications from the county clerk and recorder. The application must be submitted on or before the first Monday in June or 30 days after receiving either a notice of classification and appraisal or determination after review under 15-7-102(3) from the department, whichever is later. If the department's determination after review is not made in time to allow the county tax appeal board to review the matter during the current tax year, the appeal must be reviewed during the next tax year, but the decision by the county tax appeal board is effective for the year in which the request for review was filed with the department. The application must state the post-office address of the applicant, specifically describe the property involved, and state the facts upon which it is claimed the reduction should be made.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2574, Rev. C. 1907; re-en. Sec. 2115, R.C.M. 1921; Cal. Pol. C. Sec. 3674; amd. Sec. 2, Ch. 187, L. 1933; re-en. Sec. 2115, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1945; amd. Sec. 2, Ch. 196, L. 1957; amd. Sec. 38, Ch. 405, L. 1973; amd. Sec. 1, Ch. 360, L. 1975; amd. Sec. 3, Ch. 155, L. 1977; amd. Sec. 3, Ch. 355, L. 1977; R.C.M. 1947, 84-603; amd. Sec. 2, Ch. 630, L. 1979; amd. Sec. 4, Ch. 9, L. 1989; amd. Sec. 3, Ch. 227, L. 1993; amd. Sec. 77, Ch. 27, Sp. L. November 1993; amd. Sec. 1, Ch. 30, L. 1995; amd. Sec. 3, Ch. 56, L. 1999.

Cross-References

Department to defend property tax appeals, 15-8-115.

15-15-103. Examination of applicant — failure to hear application. (1) Before the county tax appeal board grants any application or makes any reduction applied for, it shall examine on oath the person or agent making the application with regard to the value of the property of the person. A reduction may not be made unless the applicant makes an application, as provided in 15-15-102, and attends the county tax appeal board hearing. An appeal of the board's decision may not be made to the state tax appeal board unless the person or the person's agent has exhausted the remedies available through the county tax appeal board. In order to exhaust the remedies, the person or the person's agent shall attend the county tax appeal board hearing. On written request by the person or the person's agent and on the written concurrence of the department of revenue, the county tax appeal board may waive the requirement that the person or the person's agent attend the hearing. The testimony of all witnesses at the hearing must be electronically recorded and preserved for 1 year. If the decision of the county tax appeal board is appealed, the record of the proceedings, including the electronic recording of all testimony, must be forwarded, together with all exhibits, to the state tax appeal board. The date of the hearing, the proceedings before the board, and the decision must be entered upon the minutes of the board, and the board shall notify the applicant of its decision by mail within 3 days. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than 3 days after the board holds its final hearing of the year.

(2) Except as provided in 15-15-201, if a county tax appeal board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, the taxpayer's application is considered to be granted on the day following the board's final meeting for that year. The department shall enter the appraisal or classification sought in the application in the property tax record. An application is not automatically granted for the following appeals:

(a) those listed in 15-2-302; and

(b) if a taxpayer's appeal from the department's determination of classification or appraisal made pursuant to 15-7-102 was not received in time, as provided for in 15-15-102, to be considered by the board during its current session.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2575, Rev. C. 1907; re-en. Sec. 2116, R.C.M. 1921; Cal. Pol. C. Sec. 3675; amd. Sec. 3, Ch. 187, L. 1933; re-en. Sec. 2116, R.C.M. 1935; amd. Sec. 3, Ch. 196, L. 1957; amd. Sec. 39, Ch. 405, L. 1973; amd. Sec. 2, Ch. 38, L. 1974; amd. Sec. 4, Ch. 355, L. 1977; R.C.M. 1947, 84-604; amd. Sec. 3, Ch. 630, L. 1979; (2)En. Sec. 4, Ch. 630, L. 1979; amd. Sec. 3, Ch. 471, L. 1987; amd. Sec. 4, Ch. 227, L. 1993; amd. Sec. 2, Ch. 15, Sp. L. November 1993; amd. Sec. 78, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 134, L. 1997; amd. Sec. 4, Ch. 56, L. 1999; amd. Sec. 4, Ch. 85, L. 1999.

15-15-104. Appeal to state tax appeal board. If the appearance provisions of 15-15-103 have been complied with, a person or the department of revenue on behalf of the state or any municipal corporation aggrieved by the action of any county tax appeal board may appeal to the state board under 15-2-301.

History: Ap. p. Sec. 9, Ch. 3, L. 1923; re-en. Sec. 2122.9, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1939; amd. Sec. 54, Ch. 405, L. 1973; amd. Sec. 4, Ch. 38, L. 1974; amd. Sec. 1, Ch. 277, L. 1974; amd. Sec. 1, Ch. 155, L. 1977; amd. Sec. 1, Ch. 249, L. 1977; Sec. 84-709, R.C.M. 1947; Ap. p. by Code Commissioner, 1979; R.C.M. 1947, 84-709(part); amd. Sec. 3, Ch. 15, Sp. L. November 1993.

15-15-105. Repealed. Sec. 7, Ch. 501, L. 1981.

History: En. 84-709.2 by Sec. 2, Ch. 404, L. 1975; R.C.M. 1947, 84-709.2(part).

15-15-106. Repealed. Sec. 7, Ch. 501, L. 1981.

History: En. 84-709.3 by Sec. 3, Ch. 404, L. 1975; R.C.M. 1947, 84-709.3(part).

Part 2
Motor Vehicle Appeals

15-15-201. Motor vehicle tax appeals — payment and protest of local option taxes or fees in lieu of tax on motor vehicles. (1) (a) A taxpayer who seeks to appeal the imposition of local option taxes on light vehicles or fees in lieu of tax assessed against a motor vehicle and imposed by the department of justice under authority of 15-8-202 shall file a written application for the appeal not later than 30 days after the anniversary date for reregistration, as determined by 61-3-315, of the vehicle that is the subject of the appeal. The application must be on a form prescribed by the department of justice in consultation with the state tax appeal board.

(b) The application must include a specific explanation of the basis for the taxpayer's appeal. The basis for appeal must be related to the factors to be considered and applied by the department of justice under 61-3-503, 61-3-506, 61-3-528, and 61-3-529.

(2) (a) The treasurer of the county or municipality is not required to deposit local option vehicle taxes or fees in lieu of tax on a motor vehicle paid under protest in the special fund designated as a protest fund as required for property taxes under 15-1-402. The taxes or fees paid under protest may be reported and distributed in the same manner as those received without protest.

(b) If a refund is payable as a result of the taxpayer prevailing in a tax appeal or court proceeding concerning the protested motor vehicle taxes or fees, a refund may be made in accordance with 15-16-603.

(3) (a) A motor vehicle tax appeal may be heard by the county tax appeal board during its next regularly scheduled session if the application for the appeal was filed by December 1. If during its current session, a county tax appeal board refuses or fails to hear a taxpayer's application that was timely filed by December 1, then the taxpayer's application is considered to be granted on the day following the board's final meeting for that year.

(b) A motor vehicle tax appeal filed after December 1 may be held over by the board to a session in the following year. If a taxpayer's application that was timely filed after December 1 of the current session of the county tax appeal board is held over to a session in the following year and if the county tax appeal board refuses or fails to hear the application during the following session, then the application is considered to be granted on the day following the board's final meeting for that year.

History: **En. Sec. 1, Ch. 85, L. 1999; amd. Sec. 6, Ch. 85, L. 1999; amd. Sec. 2, Ch. 191, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 191 in (1)(a) in first sentence near beginning substituted "imposition of local option taxes on light vehicles" for "imposition of taxes"; in (1)(b) near end after "department of justice under" substituted "61-3-503" for "61-3-502 through 61-3-504"; and in (2)(a) in first sentence near middle after "is not required to deposit" substituted "local option vehicle taxes" for "property taxes". Amendment effective April 3, 2001.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

CHAPTER 16

COLLECTION OF PROPERTY TAXES

Part 1 — Notice and Payment

15-16-101. Treasurer to publish notice — manner of publication.
15-16-102. Time for payment — penalty for delinquency.
15-16-103. Special improvement districts with annual interest payments — collection of special assessments for all special improvements.
15-16-104. Entry of payment — receipt.
15-16-105. When property assessed more than once.
15-16-106 through 15-16-110 reserved.
15-16-111 through 15-16-114. Repealed.
15-16-115. Treasurer's record of personal property taxes paid.
15-16-116. Repealed.
15-16-117. Personal property — treasurer's duty to collect certain taxes.
15-16-118. Minimum tax payment — limitation of appeal.
15-16-119. Taxation of personal property — duty of department — collection by department of administration.
15-16-120 reserved.
15-16-121. Repealed.

Part 2 — Special Payment Provisions

15-16-201. Tax prepayment — new industrial facilities.
15-16-202. Boats, snowmobiles, and motor vehicles — payment of current and back fees.
15-16-203. Assessment of property previously exempt.

Part 3 — Reporting Delinquent Taxes

15-16-301. Delinquent list — list of taxes suspended or canceled — real property.
15-16-302. Tabulation and transmittal of property delinquent list.
15-16-303. Treasurer charged with delinquent taxes.
15-16-304. Repealed.
15-16-305. Disposition of delinquent list.

Part 4 — Liens and Limitations

15-16-401. Tax due as a judgment or lien.
15-16-402. Tax on personal property lien on realty — separate assessment — filing of mortgage satisfaction.
15-16-403. Lien on real property and improvements.
15-16-404. County lien on moneys of taxpayer.

Part 5 — Collection by Suit

15-16-501. Repealed.
15-16-502. Repealed.
15-16-503. Collection by suit of personal property taxes when taxpayer moves to another county.
15-16-504. Evidence at trial.
15-16-505. Repealed.

Part 6 — Refunds

15-16-601. Repealed.
15-16-602. Concurrent remedies.
15-16-603. Refund of taxes — limitations on refunds.
15-16-604. Judicial review of tax refund denials.
15-16-605. Payment of refunds — exception.
15-16-606 through 15-16-610 reserved.
15-16-611. Reduction of property tax for property destroyed by natural disaster — proration of taxes on replaced property.
15-16-612. Refund of tax paid.
15-16-613. Refund of certain taxes paid on migratory property.

Part 7 — Cancellations

15-16-701. Personal property taxes five years delinquent — list.
15-16-702. Cancellation of taxes and obligations — filing of lists.
15-16-703. Adjustment of accounts after cancellation.
15-16-704. Certain unpaid taxes uncollectible — stricken from records.

Part 8 — Suspensions

15-16-801. Payment of suspended delinquent property taxes.
15-16-802. Repealed.
15-16-803. Repealed.

Chapter Cross-References

Suspension of property taxes for persons in military services — collection procedures abated, 10-1-606.
Suspension or cancellation of delinquent property taxes on commercial property, 15-24-1701 through 15-24-1703.
State or county authorized to acquire property by taxation, 70-1-204.
Payment of taxes required to prove adverse possession, 70-19-411.
Taxes, assessments, and liens as encumbrance on real property, 70-20-305.

Part 1
Notice and Payment

15-16-101. Treasurer to publish notice — manner of publication. (1) Within 10 days after the receipt of the property tax record, the county treasurer shall publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on the next November 30 or within 30 days after the notice is postmarked and that unless paid prior to that time the amount then due will be delinquent and will draw interest at the rate of 5/6 of 1% per month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on the next May 31 and that unless paid prior to that time the taxes will be delinquent and will draw interest at the rate of 5/6 of 1% per month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) (a) The county treasurer shall send to the last-known address of each taxpayer a written notice, postage prepaid, showing the amount of taxes and assessments due for the

current year and the amount due and delinquent for other years. The written notice must include:

(i) the taxable value of the property;

(ii) the total mill levy applied to that taxable value;

(iii) the value of each mill in that county;

(iv) itemized city services and special improvement district assessments collected by the county;

(v) the number of the school district in which the property is located; and

(vi) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax.

(b) If the property is the subject of a tax sale for which a tax sale certificate has been issued under 15-17-212, the notice must also include, in a manner calculated to draw attention, a statement that the property is the subject of a tax sale and that the taxpayer may contact the county treasurer for complete information.

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection (2)(a)(iv) ready for mailing.

(4) The notice in every case must be published once a week for 2 weeks in a weekly or daily newspaper published in the county, if there is one, or if there is not, then by posting it in three public places. Failure to publish or post notices does not relieve the taxpayer from any tax liability. Any failure to give notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax.

(5) If the department revises an assessment that results in an additional tax of $5 or less, an additional tax is not owed and a new tax bill does not need to be prepared.

History: Ap. p. Sec. 3860, Pol. C. 1895; amd. Sec. 1, p. 97, L. 1899; re-en. Sec. 2616, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1917; re-en. Sec. 2169, R.C.M. 1921; Cal. Pol. C. Sec. 3746; amd. Sec. 2, Ch. 96, L. 1923; amd. Sec. 2, Ch. 67, L. 1931; re-en. Sec. 2169, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1977; Sec. 84-4101, R.C.M. 1947; Ap. p. Sec. 3861, Pol. C. 1895; re-en. Sec. 2617, Rev. C. 1907; re-en. Sec. 2170, R.C.M. 1921; Cal. Pol. C. Sec. 3749; re-en. Sec. 2170, R.C.M. 1935; Sec. 84-4105, R.C.M. 1947; R.C.M. 1947, 84-4101, 84-4105; amd. Sec. 1, Ch. 492, L. 1981; amd. Sec. 1, Ch. 576, L. 1981; amd. Sec. 1, Ch. 6, Sp. L. 1981; amd. Sec. 29, Ch. 587, L. 1987; amd. Sec. 79, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 448, L. 1999; amd. Sec. 1, Ch. 472, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 472 inserted (2)(b) requiring notice for property subject to tax sale and for which tax sale certificate has been issued to include statement that property is subject to tax sale and that taxpayer may contact county treasurer for information; and made minor changes in style. Amendment effective October 1, 2001.

Cross-References

Treasurer as collector of taxes, 7-6-2503.
Definition of school district, 20-15-403.
Hail insurance assessment included with statement, 80-2-224.
Copy of water rights filing notice included with statement, 85-2-213.

15-16-102. Time for payment — penalty for delinquency. Unless suspended or canceled under the provisions of Title 15, chapter 24, part 17, all taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103, are payable as follows:

(1) One-half of the taxes are payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half are payable on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of the taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, the amount payable is delinquent and draws interest at the rate of 5/6 of 1% a month from and after the delinquency until paid and 2% must be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year are delinquent and draw interest at the rate of 5/6 of 1% a month from and after the delinquency until paid, and 2% must be added to the delinquent taxes as a penalty.

(4) (a) If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307.

(b) If taxes on property qualifying under the low-income property tax assistance provisions of 15-6-134(1)(c) and 15-6-191 are paid within 20 calendar days of the date on which the taxes are due, the taxes may be paid without penalty or interest. If a tax payment is made later than 20 days after the taxes were due, the penalty must be paid and interest accrues from the date on which the taxes were due.

(5) A taxpayer may pay current year taxes without paying delinquent taxes. The county treasurer shall accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, provided that taxes for both halves of the current tax year have been paid. Payment of taxes for delinquent taxes must be applied to the taxes that have been delinquent the longest. The payment of taxes for the current tax year is not a redemption of the property tax lien for any delinquent tax year.

(6) The penalty and interest on delinquent assessment payments for specific parcels of land may be waived by resolution of the city council. A copy of the resolution must be certified to the county treasurer.

(7) If the department revises an assessment that results in an additional tax of $5 or less, an additional tax is not owed and a new tax bill does not need to be prepared.

History: En. Sec. 1, Ch. 96, L. 1923; amd. Sec. 1, Ch. 79, L. 1929; amd. Sec. 1, Ch. 67, L. 1931; amd. Sec. 4, Ch. 158, L. 1933; Sec. 1(a) amd. Sec. 1, Ch. 1, Ex. L. 1933; re-en. Sec. 2169.2, R.C.M. 1935; R.C.M. 1947, 84-4103; amd. Sec. 2, Ch. 165, L. 1979; amd. Sec. 4, Ch. 527, L. 1981; amd. Sec. 2, Ch. 576, L. 1981; amd. Sec. 2, Ch. 6, Sp. L. 1981; amd. Sec. 19, Ch. 695, L. 1985; amd. Sec. 1, Ch. 69, L. 1987; amd. Sec. 30, Ch. 587, L. 1987; amd. Sec. 8, Ch. 655, L. 1987; amd. Sec. 14, Ch. 449, L. 1989; amd. Sec. 1, Ch. 631, L. 1989; amd. Sec. 3, Ch. 699, L. 1989; amd. Sec. 1, Ch. 704, L. 1989; amd. Sec. 1, Ch. 33, L. 1995; amd. Sec. 29, Ch. 451, L. 1995; amd. Sec. 59, Ch. 42, L. 1997; amd. Sec. 3, Ch. 448, L. 1999; amd. Sec. 1, Ch. 410, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 410 inserted (4)(b) concerning payment of taxes on property qualifying under low-income property tax assistance; and made minor changes in style. Amendment effective April 28, 2001.

Applicability: Section 3, Ch. 410, L. 2001, provided: "[This act] applies to eligible property tax payments made after March 1, 2001."

Cross-References

County Treasurer to collect city and town taxes, 7-6-4413.
Definition of improvements, 15-1-101.
Reduction of tax for destroyed property, 15-16-611.
Suspension of taxes, Title 15, ch. 16, part 8.
Applicable to payment of tax on net proceeds and royalties of mines, 15-23-507.
Applicable to payment of tax on metal mines, 15-23-804.
Delinquent taxpayer ineligible for hail insurance program, 80-2-207.
Collection of irrigation district assessments, 85-7-2136.
Collection of drainage district assessments, 85-8-601.
Collection of conservancy district assessments, 85-9-604.

15-16-103. Special improvement districts with annual interest payments — collection of special assessments for all special improvements. (1) Special assessments or installments of special assessments made for special improvements in towns and cities, the bonds for which annual interest payments have been specified and that were issued after July 1, 1981, and that have been duly and regularly made and levied by resolution according to law, shall be payable as follows:

(a) One-half of the taxes are payable on or before 5 p.m. on November 30 of each year. If the taxes are not paid on or before that date, they are subject to the same interest and penalty for nonpayment as delinquent property taxes under 15-16-102. The penalty and interest may be waived by resolution of the city council, as provided in 15-16-102(6).

(b) One-half of the taxes are payable on or before 5 p.m. on May 31 of each year. If the taxes are not paid on or before that date, they are subject to the same interest and penalty for nonpayment as delinquent property taxes under 15-16-102. The penalty and interest may be waived by resolution of the city council, as provided in 15-16-102(6).

(2) The collection of special assessments or installments of special assessments made for special improvements in towns and cities are as provided by 7-12-4181.

History: En. Sec. 1, Ch. 96, L. 1923; amd. Sec. 1, Ch. 79, L. 1929; amd. Sec. 1, Ch. 67, L. 1931; amd. Sec. 4, Ch. 158, L. 1933; re-en. Sec. 2169.3, R.C.M. 1935; R.C.M. 1947, 84-4104; amd. Sec. 5, Ch. 527, L. 1981; amd. Sec. 15, Ch. 449, L. 1989.

Cross-References

Penalty and interest on delinquent taxes, 15-16-102.

15-16-104. Entry of payment — receipt. (1) The county treasurer shall note the date and the amount of the payment of any tax in the property tax record opposite the name of the person paying.

(2) (a) Except as provided in subsection (2)(b), the county treasurer shall give a receipt to the person paying any tax, specifying the amount of the assessment and the tax paid, with a description of the property assessed.

(b) If the payment is received through the mail or by any electronic means, the county treasurer shall issue a receipt only on request of the person paying the tax. If the county treasurer issues a receipt, it must contain the information specified in subsection (2)(a).

History: (1)En. Sec. 3862, Pol. C. 1895; re-en. Sec. 2618, Rev. C. 1907; re-en. Sec. 2171, R.C.M. 1921; Cal. Pol. C. Sec. 3750; amd. Sec. 3, Ch. 96, L. 1923; re-en. Sec. 2171, R.C.M. 1935; Sec. 84-4106, R.C.M. 1947; (2)En. Sec. 97, p. 108, L. 1891; re-en. Sec. 3863, Pol. C. 1895; re-en. Sec. 2619, Rev. C. 1907; re-en. Sec. 2172, R.C.M. 1921; Cal. Pol. C. Sec. 3751; re-en. Sec. 2172, R.C.M. 1935; Sec. 84-4107, R.C.M. 1947; R.C.M. 1947, 84-4106, 84-4107; amd. Sec. 2, Ch. 599, L. 1987; amd. Sec. 80, Ch. 27, Sp. L. November 1993.

15-16-105. When property assessed more than once. When the county treasurer discovers that any property has been assessed more than once for the same year, the county treasurer shall collect only the tax due and report that fact to the department.

History: En. Sec. 146, p. 117, L. 1891; re-en. Sec. 3914, Pol. C. 1895; re-en. Sec. 2670, Rev. C. 1907; re-en. Sec. 2223, R.C.M. 1921; Cal. Pol. C. Sec. 3805; re-en. Sec. 2223, R.C.M. 1935; R.C.M. 1947, 84-4178; amd. Sec. 81, Ch. 27, Sp. L. November 1993.

15-16-106 through 15-16-110 reserved.

15-16-111 through 15-16-114. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

Compiler's Comments

Histories of Repealed Sections:

15-16-111. En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2683, Rev. C. 1907; re-en. Sec. 2238, R.C.M. 1921; Cal. Pol. C. Sec. 3820; amd. Sec. 1, Ch. 102, L. 1923; amd. Sec. 1, Ch. 143, L. 1929; re-en. Sec. 2238, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1939; amd. Sec. 1, Ch. 136, L. 1943; amd. Sec. 1, Ch. 23, L. 1951; amd. Sec. 82, Ch. 405, L. 1973; R.C.M. 1947, 84-4201; amd. Sec. 31, Ch. 587, L. 1987.

15-16-112. En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2690, Rev. C. 1907; re-en. Sec. 2251, R.C.M. 1921; re-en. Sec. 2251, R.C.M. 1935; amd. Sec. 84, Ch. 405, L. 1973; R.C.M. 1947, 84-4211; amd. Sec. 32, Ch. 587, L. 1987.

15-16-113. En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R.C.M. 1921; Cal. Pol. C. Sec. 3821; amd. Sec. 2, Ch. 102, L. 1923; re-en. Sec. 2239, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963; amd. Sec. 83, Ch. 405, L. 1973; amd. Sec. 1, Ch. 162; amd. Sec. 1, Ch. 475, L. 1975; amd. Sec. 1, Ch. 105, L. 1977; R.C.M. 1947, 84-4202(1), (2); amd. Sec. 33, Ch. 587, L. 1987; amd. Sec. 2, Ch. 631, L. 1989.

15-16-114. En. Sec. 158, p. 121, L. 1891; re-en. Sec. 3943, Pol. C. 1895; amd. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2686, Rev. C. 1907; re-en. Sec. 2247, R.C.M. 1921; Cal. Pol. C. Sec. 3823; amd. Sec. 1, Ch. 122, L. 1933; re-en. Sec. 2247, R.C.M. 1935; amd. Sec. 15, Ch. 388, L. 1975; R.C.M. 1947, 84-4209(part); amd. Sec. 34, Ch. 587, L. 1987.

15-16-115. Treasurer's record of personal property taxes paid. (1) On or before December 1 of each year, the county treasurer shall note on the property tax record, opposite the name of each person from whom taxes have been collected, the amount of taxes received and the date of receipt.

(2) If the taxes have not been collected, the treasurer shall note in the property tax record the reason why collection was not made.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2690, Rev. C. 1907; re-en. Sec. 2250, R.C.M. 1921; re-en. Sec. 2250, R.C.M. 1935; R.C.M. 1947, 84-4210; amd. Sec. 35, Ch. 587, L. 1987; amd. Sec. 82, Ch. 27, Sp. L. November 1993.

Cross-References

Definition of personal property, 15-1-101.

Applies to migratory personal property, 15-24-302.

15-16-116. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 1, Ch. 81, L. 1923; re-en. Sec. 2165.1, R.C.M. 1935; R.C.M. 1947, 84-4010.

15-16-117. Personal property — treasurer's duty to collect certain taxes. (1) The county treasurer shall demand payment of road taxes, authorized by 7-14-2206 or 7-14-2501 through 7-14-2504, from each person liable for the taxes whose name does not appear on the property tax record. On the neglect or refusal of a person to pay the taxes, the treasurer shall collect the taxes by seizure and sale of any property owned by the person.

(2) Subject to 15-10-420, these taxes must be added in the property tax record to other property taxes of persons paying taxes upon real and personal property and must be paid to the county treasurer at the time of payment of other taxes.

(3) The procedure for the sale of property by the county treasurer for the taxes is regulated by 15-16-119 and 15-17-911.

(4) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

History: (1), (2)En. Sec. 1, Ch. 168, L. 1935; re-en. Sec. 2252.1, R.C.M. 1935; Sec. 84-4213, R.C.M. 1947; (3)En. Sec. 2, Ch. 168, L. 1935; re-en. Sec. 2252.2, R.C.M. 1935; Sec. 84-4214, R.C.M. 1947; R.C.M. 1947, 84-4213, 84-4214; amd. Sec. 36, Ch. 587, L. 1987; amd. Sec. 3, Ch. 631, L. 1989; amd. Sec. 4, Ch. 561, L. 1993; amd. Sec. 83, Ch. 27, Sp. L. November 1993; amd. Sec. 94, Ch. 584, L. 1999; amd. Sec. 8, Ch. 571, L. 2001; amd. Sec. 95, Ch. 574, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 571 in (1) in first sentence near beginning after "shall demand payment of" deleted "poor fund"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 574 in (1) near beginning after "payment of" deleted "poor fund taxes, authorized by 53-2-322, and". Amendment effective July 1, 2001.

15-16-118. Minimum tax payment — limitation of appeal. (1) If the taxes and special assessments due for the current year shown in the written notice sent to the taxpayer as required in 15-16-101(2) are less than $5 or if a tax notice of taxes and special assessments due on personal property is less than $5, the county treasurer shall notify the taxpayer that a minimum tax of $5 is imposed and due. The $5 tax is imposed for purposes of defraying administrative expenses incurred in administering the tax. The difference between the taxes and special assessments and the minimum tax of $5 is to be deposited in the county general fund.

(2) The notification of the $5 minimum tax required by subsection (1) must be made in the notice required in 15-16-101(2) or in the notice of taxes and special assessments due on personal property.

(3) The minimum tax imposed by this section is not affected by the limitation on property taxes contained in Title 15, chapter 10, part 4.

(4) The minimum assessment imposed by this section does not apply to assessments levied against property owned by the state or a county, consolidated local government, city, town, school district, or other governmental entity unless the total assessments levied against all the property owned by the governmental entity are less than $5.

History: En. Sec. 1, Ch. 474, L. 1991; amd. Sec. 1, Ch. 557, L. 1993.

15-16-119. Taxation of personal property — duty of department — collection by department of administration. (1) If the taxes on personal property are not a lien upon real property in the same county in an amount sufficient to secure the payment of the taxes, the department shall assess the property and compute the tax for the assessment. The department shall notify the county treasurer of the assessment and the amount of taxes due. To compute the taxes due on the personal property, the department shall use the appropriate mills levied during the previous year.

(2) The county treasurer shall notify the person against whom the tax is assessed and any other person having a properly perfected security interest of record of the amount and due date of the tax. The tax is due and payable 30 days from the date the treasurer mails the notice. Taxes not paid within 30 days become delinquent, and the penalty and interest provisions of 15-16-101 must be applied.

(3) The county treasurer shall, after the tax becomes delinquent, either proceed under subsection (7) or levy upon and take into possession the personal property against which a tax is assessed or any other personal property in the hands of the delinquent taxpayer. The county treasurer may proceed to sell the property in the same manner as property is sold on execution by the sheriff.

(4) The county treasurer shall, for the purpose of making the levy and sale, direct the sheriff to make the levy and sale. The sheriff, undersheriff, or any deputy sheriff of the county is ex officio a deputy county treasurer for sale purposes and may receive payment of the taxes,

penalty, and interest. The sheriff is entitled to the fees, mileage, and costs as provided in 7-32-2141 and 7-32-2143, which must be assessed against the delinquent taxpayer.

(5) The county treasurer and the treasurer's sureties are liable on the treasurer's official bond for all taxes on personal property remaining uncollected by reason of the willful failure and neglect of the treasurer to levy upon and sell the personal property for the taxes levied upon the property, including penalty and interest.

(6) Failure by the sheriff, undersheriff, or deputy sheriff acting as a deputy county treasurer to make the levy and sale results in a levy against the official bond of the sheriff, undersheriff, or deputy sheriff for payment of the delinquent tax, including penalty and interest.

(7) The county treasurer shall give the board of county commissioners a list of delinquent personal property taxpayers and the taxes due. The board may order the county treasurer to verify the list under oath and to send a copy of the list to the department of administration for collection under Title 17, chapter 4, part 1.

(8) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

History: En. Sec. 157, Ch. 27, Sp. L. November 1993; amd. Sec. 6, Ch. 589, L. 1995; amd. Sec. 60, Ch. 42, L. 1997; amd. Sec. 1, Ch. 197, L. 1999.

15-16-120 reserved.

15-16-121. Repealed. Sec. 50, Ch. 451, L. 1995.

History: En. Sec. 20, Ch. 695, L. 1985; amd. Sec. 9, Ch. 655, L. 1987; amd. Sec. 2, Ch. 33, L. 1995.

Part 2
Special Payment Provisions

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-16-201. Tax prepayment — new industrial facilities. (1) A person intending to construct or locate a major new industrial facility, as defined in subsection (2) of this section, shall upon request of the board of county commissioners of the county in which the facility is to be located, prepay, when permission is granted to construct or locate by the appropriate governmental agency, an amount equal to three times the estimated property tax due the year the facility is completed. The person who is to prepay under this section shall not be obligated to prepay the entire amount at one time but, upon request of the board of county commissioners of the county, shall prepay only that amount shown to be needed from time to time. To assure this payment or payments, the person who is to prepay shall guarantee to the board of county commissioners and also have a bank or banks guarantee that these amounts will be paid as needed for expenditures created by the impact. When the facility is completed and assessed by the department of revenue, it shall be subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that one-fifth of the amount prepaid shall be allowed as a credit against property taxes in each of the first 5 years after the start of productive operation of the facility.

(2) A major new industrial facility is a manufacturing or mining facility other than a large-scale mineral development as defined in 90-6-302 which will employ on an average annual basis at least 100 people in construction or operation of the facility and which will create a substantial adverse impact on existing state, county, or municipal services.

History: En. 84-41-105 by Sec. 1, Ch. 449, L. 1975; R.C.M. 1947, 84-41-105; amd. Sec. 12, Ch. 617, L. 1981; amd. Sec. 3, Ch. 227, L. 1991.

Cross-References

Property classified as new industrial property under 15-6-135 and 15-6-192 ineligible, 15-6-192.

Coal Board grants for payment of credit, 90-6-205.

15-16-202. Boats, snowmobiles, and motor vehicles — payment of current and back fees. (1) The fee in lieu of personal property taxes assessed against a boat for the year in which application for decals is made and the immediately previous year must be paid before license decals may be issued pursuant to 23-2-515.

(2) The fee in lieu of tax imposed on a snowmobile for the year in which application for registration is made and the immediately previous year must be paid before a snowmobile may be registered pursuant to 23-2-616.

(3) Except for mobile homes and manufactured homes as defined in 15-1-101, the light vehicle registration fee or fee in lieu of tax imposed or assessed against a motor vehicle for the current year and the immediately previous year must be paid before a motor vehicle may be registered or reregistered pursuant to 61-3-303.

(4) The provisions of subsections (1) through (3) do not require payment of the immediately previous year's fees if the fees have already been paid.

History: En. Sec. 1, Ch. 421, L. 1987; amd. Sec. 13, Ch. 649, L. 1987; amd. Sec. 10, Ch. 200, L. 1997; amd. Sec. 7, Ch. 496, L. 1997; amd. Sec. 3, Ch. 191, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 191 in (3) after "homes as defined in 15-1-101" substituted "the light vehicle registration fee" for "the new motor vehicle sales tax and the motor vehicle tax"; and in (4) in two places before "fees" deleted "taxes or". Amendment effective April 3, 2001.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

15-16-203. Assessment of property previously exempt. (1) Subject to 15-10-420, real property or improvements exempt from taxation under Title 15, chapter 6, that during a tax year become the property of a person subject to taxation must be assessed and taxed from the date of change from a nontaxable status to a taxable status.

(2) As provided in subsection (3), the county treasurer shall adjust the tax that would have been due and payable for the current year on the property under 15-16-102 if the property was not exempt.

(3) To determine the amount of tax due for previously exempt property, the county treasurer shall multiply the amount of tax levied and assessed on the original taxable value of the property for the year by the ratio that the number of days in the year that the property will be in taxable status bears to 365.

(4) If the property has not been assessed and taxed during the taxable year because of exemption, the department shall prepare a special assessment for the property and the county treasurer shall determine the amount of taxes that would have been due under subsection (2).

(5) Upon determining the amount of tax due, the county treasurer shall notify the person to whom the tax is assessed, in the same manner as notification is provided under 15-16-101(2), of the amount due and the date or dates on which the taxes due are payable as provided in 15-16-102.

History: En. Sec. 1, Ch. 570, L. 1991; amd. Sec. 84, Ch. 27, Sp. L. November 1993; amd. Sec. 95, Ch. 584, L. 1999.

Part 3
Reporting Delinquent Taxes

15-16-301. Delinquent list — list of taxes suspended or canceled — real property. (1) On the third Monday of December and on the third Monday of June of each year, the county treasurer must make a report to the county clerk and recorder in detail, showing the amount of taxes collected and a complete list of all persons and property then owing taxes.

(2) The county treasurer must make a separate report to the county clerk and recorder showing the amount of taxes suspended or canceled under the provisions of Title 15, chapter 24, part 17, during the 6-month period immediately preceding the date of the report.

(3) The county clerk and recorder shall compare the reports with the books of the county treasurer and shall keep a record of the reports in his office.

History: En. Sec. 101, p. 109, L. 1891; re-en. Sec. 3867, Pol. C. 1895; re-en. Sec. 2623, Rev. C. 1907; re-en. Sec. 2176, R.C.M. 1921; Cal. Pol. C. Sec. 3758; amd. Sec. 5, Ch. 96, L. 1923; re-en. Sec. 2176, R.C.M. 1935; R.C.M. 1947, 84-4111; amd. Sec. 37, Ch. 587, L. 1987; amd. Sec. 4, Ch. 631, L. 1989.

15-16-302. Tabulation and transmittal of property delinquent list. (1) The county treasurer shall, at the time specified in 15-16-301, deliver to the county clerk and recorder a complete delinquent list of all persons owing taxes and the property on which the taxes are owed.

(2) In the list, all matters and things contained in the property tax record relating to delinquent persons or property must be set down in numerical or alphabetical order.

(3) The county clerk and recorder shall carefully compare the list with the property tax record, and if satisfied that the list contains a full and true statement of all taxes due and unpaid, the county clerk and recorder shall total the amount of taxes remaining unpaid, credit the county treasurer with that amount, make a final settlement with the treasurer of all taxes charged against the treasurer on the property tax record, and require from the treasurer an immediate account for any existing deficiency.

History: (1)En. Sec. 102, p. 109, L. 1891; re-en. Sec. 3868, Pol. C. 1895; re-en. Sec. 2624, Rev. C. 1907; re-en. Sec. 2177, R.C.M. 1921; re-en. Sec. 2177, R.C.M. 1935; Sec. 84-4112, R.C.M. 1947; (2)En. Sec. 103, p. 109, L. 1891; re-en. Sec. 3869, Pol. C. 1895; re-en. Sec. 2625, Rev. C. 1907; re-en. Sec. 2178, R.C.M. 1921; Cal. Pol. C. Sec. 3760; re-en. Sec. 2178, R.C.M. 1935; Sec. 84-4113, R.C.M. 1947; (3)En. Sec. 104, p. 109, L. 1891; re-en. Sec. 3870, Pol. C. 1895; re-en. Sec. 2626, Rev. C. 1907; re-en. Sec. 2179, R.C.M. 1921; Cal. Pol. C. Sec. 3761; re-en. Sec. 2179, R.C.M. 1935; Sec. 84-4114, R.C.M. 1947; R.C.M. 1947, 84-4112, 84-4113, 84-4114; amd. Sec. 38, Ch. 587, L. 1987; amd. Sec. 85, Ch. 27, Sp. L. November 1993.

15-16-303. Treasurer charged with delinquent taxes. After settlement with the county treasurer as prescribed in 15-16-302, the county clerk and recorder must charge the treasurer with the amount of taxes due on the delinquent tax list, minus taxes suspended or canceled under the provisions of Title 15, chapter 24, part 17, and within 3 days thereafter deliver the list, duly certified, to the county treasurer.

History: En. Sec. 105, p. 109, L. 1891; re-en. Sec. 3871, Pol. C. 1895; re-en. Sec. 2627, Rev. C. 1907; re-en. Sec. 2180, R.C.M. 1921; Cal. Pol. C. Sec. 3762; amd. Sec. 6, Ch. 96, L. 1923; re-en. Sec. 2180, R.C.M. 1935; R.C.M. 1947, 84-4115; amd. Sec. 39, Ch. 587, L. 1987; amd. Sec. 5, Ch. 631, L. 1989.

15-16-304. Repealed. Sec. 2, Ch. 201, L. 1985.

History: En. Sec. 106, p. 109, L. 1891; re-en. Sec. 3872, Pol. C. 1895; re-en. Sec. 2628, Rev. C. 1907; re-en. Sec. 2181, R.C.M. 1921; Cal. Pol. C. Sec. 3763; amd. Sec. 7, Ch. 96, L. 1923; re-en. Sec. 2181, R.C.M. 1935; amd. Sec. 150, Ch. 516, L. 1973; R.C.M. 1947, 84-4116.

15-16-305. Disposition of delinquent list. (1) On the third Tuesday of February, the county clerk and recorder shall compare the lists with the assessments of persons and property not shown as "paid" on the property tax record. If the taxes have been paid, the county clerk and recorder shall note the fact in the appropriate section of the property tax record.

(2) The county clerk and recorder shall then administer to the county treasurer an oath, to be written and subscribed in the delinquent list, that every person and all property assessed in the delinquent list on which taxes have been paid have been credited in the list with the payment.

(3) The county clerk and recorder shall then total the amount of taxes remaining unpaid and credit the treasurer with the amount and have a final settlement with the treasurer. The delinquent list must remain in the county clerk and recorder's office.

(4) At the time mentioned in subsection (1), the treasurer shall make an affidavit, endorsed on the list, that the taxes not marked "paid" have not been paid and that the treasurer has not been able to discover any property belonging to or in possession of the persons liable to pay the taxes to collect them.

History: (1)En. Sec. 141, p. 116, L. 1891; re-en. Sec. 3908, Pol. C. 1895; re-en. Sec. 2664, Rev. C. 1907; re-en. Sec. 2217, R.C.M. 1921; re-en. Sec. 2217, R.C.M. 1935; Sec. 84-4172, R.C.M. 1947; (2)En. Sec. 142, p. 117, L. 1891; re-en. Sec. 3909, Pol. C. 1895; re-en. Sec. 2665, Rev. C. 1907; re-en. Sec. 2218, R.C.M. 1921; Cal. Pol. C. Sec. 3798; re-en. Sec. 2218, R.C.M. 1935; Sec. 84-4173, R.C.M. 1947; (3)En. Sec. 143, p. 117, L. 1891; re-en. Sec. 3910, Pol. C. 1895; re-en. Sec. 2666, Rev. C. 1907; re-en. Sec. 2219, R.C.M. 1921; Cal. Pol. C. Sec. 3799; re-en. Sec. 2219, R.C.M. 1935; Sec. 84-4174, R.C.M. 1947; (4)En. Sec. 144, p. 117, L. 1891; re-en. Sec. 3911, Pol. C. 1895; re-en. Sec. 2667, Rev. C. 1907; re-en. Sec. 2220, R.C.M. 1921; Cal. Pol. C. Sec. 3800; re-en. Sec. 2220, R.C.M. 1935; Sec. 84-4175, R.C.M. 1947; R.C.M. 1947, 84-4172, 84-4173, 84-4174, 84-4175; amd. Sec. 41, Ch. 370, L. 1987; amd. Sec. 40, Ch. 587, L. 1987; amd. Sec. 86, Ch. 27, Sp. L. November 1993.

Part 4
Liens and Limitations

Part Cross-References

Lien for delinquent mines net proceeds tax, 15-23-504, 15-23-508.
Lien for delinquent coal gross proceeds and severance taxes, 15-23-704.
Lien for delinquent metal mines gross proceeds tax, 15-23-806.

Paid tax liens more than 7 years old not allowed in consumer credit report, 31-3-112.
Inclusion of tax liens in consumer report for employment purposes, 31-3-126.
Tax lien on insured property destroyed by fire, 33-24-104.
Priority of tax lien to lien for condominium common expenses, 70-23-607.
Priority of lien for fire protection assessment, 76-13-211.
Lien of hail insurance tax levy, 80-2-225.
Priority of lien for reclamation of coal-mine land, 82-4-239.

15-16-401. Tax due as a judgment or lien. Unless suspended or canceled under the provisions of Title 15, chapter 24, part 17, every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property in the possession of the person assessed from and after the date the assessment is made. The county treasurer may issue a writ of execution for delinquent personal property taxes, unless suspended or canceled under the provisions of Title 15, chapter 24, part 17, and deliver the writ to the sheriff of any county in the state in which the property or some part of the property is located. Writs of execution may be issued at the same time to different counties. The sheriff shall proceed upon the writ in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record. The sheriff is entitled to the fees, mileage, and costs as provided in 7-32-2141 and 7-32-2143, which must be assessed against the delinquent taxpayer. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment of the taxes.

History: En. Sec. 82, p. 104, L. 1891; re-en. Sec. 3827, Pol. C. 1895; re-en. Sec. 2600, Rev. C. 1907; re-en. Sec. 2152, R.C.M. 1921; Cal. Pol. C. Sec. 3716; re-en. Sec. 2152, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1963; R.C.M. 1947, 84-3807; amd. Sec. 41, Ch. 587, L. 1987; amd. Sec. 6, Ch. 631, L. 1989; amd. Sec. 2, Ch. 197, L. 1999.

Cross-References

Execution of judgment, Title 25, ch. 13.
Ninety days on return of writ of execution, 25-13-404.

15-16-402. Tax on personal property lien on realty — separate assessment — filing of mortgage satisfaction. (1) The tax due on personal property is a prior lien upon the personal property. The lien has precedence over any other lien, claim, or demand upon the personal property. Except as provided in subsection (2), the tax on personal property is also a lien upon the real property of the owner of the personal property on and after January 1 of each year.

(2) The taxes on personal property based on a taxable value up to and including $10,000 are a first and prior lien upon the real property of the owner of the personal property. Taxes on personal property based on a taxable value in excess of $10,000 are a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon the real property appearing of record in the office of the clerk and recorder of the county where the real property is situated, at or before the time the personal property tax attached to the real property, has filed a notice as provided in subsection (3). If the notice is filed, the personal property taxes on the taxable value in excess of $10,000 are not a lien upon the owner's real property. The county treasurer shall, at the request of a mortgagee or lienholder, issue a statement of the personal property tax due on the taxable value up to and including $10,000. Personal property taxes on a taxable value up to $10,000 may be paid, redeemed from a tax sale as provided by law, or discharged separately from any personal property taxes in excess of that amount. Payment of the taxes on a taxable value up to $10,000, as provided in this subsection, discharge the tax lien upon the personal property of the owner to the extent of the payment in the order that the person paying the tax directs.

(3) The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file each year in the office of the county treasurer of the county and with the department a notice giving:

(a) the name and address of the mortgagee and holder of the mortgage or lien;
(b) the name of the reputed owner of the land;
(c) the description of the land;
(d) the date of record and expiration of the mortgage or lien;
(e) the amount of the mortgage or lien; and

(f) a statement that the holder claims the benefit of the provisions of this section.

(4) The notice is ineffectual as to any taxes that are a lien upon real property prior to the filing of the notice as provided in subsection (3).

(5) A holder of a mortgage on real property upon which personal property taxes are a lien under this section, when the owner of the real property and personal property has failed to pay taxes due on the real property and personal property for 1 or more years, may file with the department a written request to have the personal property and real property of the owner separately assessed. The request must be made by certified mail at least 10 days prior to January 1 in the year for which property is assessed. Upon receipt by the department of the request, the department shall make a separate assessment of real and personal property of the owner of the property, and the personal property taxes may not be a lien upon the mortgaged real property. The personal property taxes must be collected in the manner provided by law for other personal property.

(6) The holder of a mortgage or lien upon real property who files a certificate of satisfaction and the proof and acknowledgment of filing the certificate, as provided for in 71-1-211, shall file a copy of the certificate and the proof and acknowledgment with:

(a) the county treasurer if the holder has filed a notice under subsection (3); and

(b) the department if the holder has filed a written request under subsection (5).

(7) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

History: **En. Sec. 3828, Pol. C. 1895; re-en. Sec. 2601, Rev. C. 1907; re-en. Sec. 2153, R.C.M. 1921; Cal. Pol. C. Sec. 3717; amd. Sec. 1, Ch. 18, L. 1925; amd. Sec. 1, Ch. 113, L. 1927; amd. Sec. 1, Ch. 182, L. 1933; amd. Sec. 1, Ch. 119, L. 1935; re-en. Sec. 2153, R.C.M. 1935; amd. Sec. 1, Ch. 97, L. 1937; amd. Sec. 75, Ch. 405, L. 1973; amd. Sec. 12, Ch. 388, L. 1975; R.C.M. 1947, 84-3808; amd. Sec. 42, Ch. 587, L. 1987; amd. Sec. 1, Ch. 286, L. 1989; amd. Sec. 7, Ch. 631, L. 1989; amd. Sec. 1, Ch. 611, L. 1991; amd. Sec. 87, Ch. 27, Sp. L. November 1993.**

15-16-403. Lien on real property and improvements. Every tax due upon real property is a lien against the property assessed, and every tax due upon improvements upon real estate assessed to other than the owner of the real estate is a lien upon the land and improvements, which several liens attach as of January 1 in each year.

History: **En. Sec. 1714, 5th Div. Comp. Stat. 1887; amd. Sec. 83, p. 105, L. 1891; amd. Sec. 3829, Pol. C. 1895; re-en. Sec. 2602, Rev. C. 1907; re-en. Sec. 2154, R.C.M. 1921; Cal. Pol. C. Sec. 3718; re-en. Sec. 2154, R.C.M. 1935; amd. Sec. 13, Ch. 388, L. 1975; R.C.M. 1947, 84-3809.**

15-16-404. County lien on moneys of taxpayer. The county has a general lien, dependent on possession, upon any moneys in its possession belonging to any taxpayer for any amounts due the county for any delinquent personal property taxes that are not a lien on real estate of the taxpayer and that are not delinquent personal property taxes suspended or canceled under the provisions of Title 15, chapter 24, part 17. Due notice shall be given the lienholder, if known.

History: **En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R.C.M. 1921; Cal. Pol. C. Sec. 3821; amd. Sec. 2, Ch. 102, L. 1923; re-en. Sec. 2239, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963; amd. Sec. 83, Ch. 405, L. 1973; amd. Sec. 1, Ch. 162; amd. Sec. 1, Ch. 475, L. 1975; amd. Sec. 1, Ch. 105, L. 1977; R.C.M. 1947, 84-4202(4); amd. Sec. 43, Ch. 587, L. 1987; amd. Sec. 8, Ch. 631, L. 1989.**

Cross-References

Applies to migratory personal property, 15-24-302.

Part 5
Collection by Suit

Part Cross-References

Collection of taxes on interests in United States lands, 15-24-1104.

15-16-501. Repealed. Sec. 59, Ch. 587, L. 1987.

History: **En. Sec. 4020, Pol. C. 1895; re-en. Sec. 2738, Rev. C. 1907; re-en. Sec. 2253, R.C.M. 1921; re-en. Sec. 2253, R.C.M. 1935; R.C.M. 1947, 84-4301.**

15-16-502. Repealed. Sec. 59, Ch. 587, L. 1987.

History: **En. Sec. 4021, Pol. C. 1895; re-en. Sec. 2739, Rev. C. 1907; re-en. Sec. 2254, R.C.M. 1921; re-en. Sec. 2254, R.C.M. 1935; R.C.M. 1947, 84-4302.**

15-16-503. Collection by suit of personal property taxes when taxpayer moves to another county. If any person removes from one county to another after being assessed on personal property, the treasurer of the county in which he was assessed may sue for and collect the same in the name of the county where the assessment was made.

History: En. Sec. 149, p. 118, L. 1891; re-en. Sec. 3917, Pol. C. 1895; re-en. Sec. 2673, Rev. C. 1907; re-en. Sec. 2226, R.C.M. 1921; Cal. Pol. C. Sec. 3808; re-en. Sec. 2226, R.C.M. 1935; R.C.M. 1947, 84-4181.

15-16-504. Evidence at trial. On trial, a certified copy of the assessment signed by the county clerk and recorder of the county where the assessment was made, with the affidavit of the county treasurer that the tax has not been paid attached to the copy, describing the assessment as on the property tax record or delinquent list, is prima facie evidence that the taxes, plus interest, penalties, and costs, are due and entitles the county to judgment unless the defendant proves that the tax was paid.

History: En. Sec. 150, p. 118, L. 1891; re-en. Sec. 3918, Pol. C. 1895; re-en. Sec. 2674, Rev. C. 1907; re-en. Sec. 2227, R.C.M. 1921; Cal. Pol. C. Sec. 3809; re-en. Sec. 2227, R.C.M. 1935; R.C.M. 1947, 84-4182; amd. Sec. 44, Ch. 587, L. 1987; amd. Sec. 88, Ch. 27, Sp. L. November 1993.

15-16-505. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 3919, Pol. C. 1895; re-en. Sec. 2675, Rev. C. 1907; re-en. Sec. 2228, R.C.M. 1921; re-en. Sec. 2228, R.C.M. 1935; R.C.M. 1947, 84-4183.

Part 6
Refunds

15-16-601. Repealed. Sec. 9, Ch. 539, L. 1993.

History: En. Sec. 145, p. 117, L. 1891; re-en. Sec. 3913, Pol. C. 1895; re-en. Sec. 2669, Rev. C. 1907; re-en. Sec. 2222, R.C.M. 1921; Cal. Pol. C. Sec. 3804; re-en. Sec. 2222, R.C.M. 1935; amd. Sec. 1, Ch. 201, L. 1939; amd. Sec. 1, Ch. 71, L. 1951; R.C.M. 1947, 84-4176; amd. Sec. 3, Ch. 541, L. 1979; amd. Sec. 3, Ch. 501, L. 1981; amd. Sec. 45, Ch. 587, L. 1987; amd. Sec. 2, Ch. 601, L. 1987; amd. Sec. 1, Ch. 560, L. 1991; amd. Sec. 35, Ch. 451, L. 1993.

15-16-602. Concurrent remedies. Sections 15-16-603 through 15-16-605 may not be considered or construed to be in conflict with the provisions of chapter 1, part 4. Sections 15-16-603 through 15-16-605 and the provisions of part 4 provide and afford concurrent remedies.

History: En. Sec. 2, Ch. 201, L. 1939; R.C.M. 1947, 84-4177; amd. Sec. 4, Ch. 539, L. 1993.

15-16-603. Refund of taxes — limitations on refunds. (1) Subject to the provisions in subsections (2) and (3), a board of county commissioners shall order a refund:

(a) on a tax, penalty, interest, or cost paid more than once or erroneously or illegally collected if an appeal pursuant to 15-1-402 was not available;

(b) on a tax paid for which a refund is allowed under 15-16-612 or 15-16-613;

(c) on a tax, penalty, or interest collected as a result of an error in the description or location of real property or improvements or for duplicate taxes paid as determined by the department of revenue;

(d) on net or gross proceeds tax, centrally assessed property tax, or local government severance tax, penalty, or interest when the department of revenue notifies the board of county commissioners of an assessment revision completed pursuant to 15-8-601;

(e) upon entry of a decision either by the district court or by the state tax appeal board under 15-2-306 that has not been appealed to a higher court; or

(f) on a decision that a refund is payable as a result of a taxpayer prevailing in a motor vehicle tax or fee proceeding under 15-15-201.

(2) The taxpayer shall prove that a refund is due under subsection (1)(a) or (1)(b).

(3) (a) A refund may not be granted under subsection (1)(a) or (1)(b) unless the taxpayer or a representative of the taxpayer files a written claim with the board of county commissioners within 10 years after the date when the second half of the taxes would have become delinquent if the taxes had not been paid.

(b) The refund required under subsection (1)(c) must be made for 5 tax years or for the duration of the error, whichever period is shorter.

(c) A refund may not be made under subsection (1)(c) unless the taxpayer allowed the department of revenue access to the taxpayer's property for the purposes of appraising the property.

History: En. Sec. 1, Ch. 539, L. 1993; amd. Sec. 1, Ch. 440, L. 1995; amd. Sec. 5, Ch. 85, L. 1999.

15-16-604. Judicial review of tax refund denials. (1) A taxpayer aggrieved by a final decision of the board of county commissioners under 15-16-603 is entitled to a judicial review of the decision under this section.

(2) Proceedings for review of a decision of the board of county commissioners must be instituted by filing a petition for judicial review in the district court of the county within 30 days of receipt of the board's decision. A copy of the petition must be served on the board of county commissioners within 10 days of the filing of the petition.

(3) Review of a decision of the board of county commissioners must be conducted by the district court under the standards of review set out in 2-4-704. Additional evidence may be received by the district court under the standards set out in 2-4-703.

History: En. Sec. 2, Ch. 539, L. 1993.

15-16-605. Payment of refunds — exception. (1) In the order to refund a tax, penalty, interest, or cost under 15-16-603, the board of county commissioners shall determine the method of payment. The board may refund the amount due the taxpayer in installments over a period not to exceed 10 years. If the refund is made in installments, the taxpayer is entitled to interest on the unpaid balance at the interest rate received on public money invested by the county as provided in Title 7, chapter 6, part 2; Title 7, chapter 6, part 27; or 17-6-204.

(2) Except as provided in subsection (3), a refund of a tax, penalty, interest, or cost under 15-16-603 must be paid by the county treasurer out of the general fund of the county. The county treasurer shall transfer money from other funds of the county and of the state, school district, or other taxing jurisdictions that are proratably responsible for the refunds as may be necessary to reimburse the county general fund for the refund.

(3) If the board of county commissioners revises an assessment of property taxes that would result in a refund of $5 or less, then a refund is not owed to the taxpayer.

History: En. Sec. 3, Ch. 539, L. 1993; amd. Sec. 4, Ch. 448, L. 1999.

15-16-606 through 15-16-610 reserved.

15-16-611. Reduction of property tax for property destroyed by natural disaster — proration of taxes on replaced property. (1) The department shall, upon showing by a taxpayer that some or all of the improvements on the taxpayer's real property, that a trailer or mobile home, or that personal property taxed under Title 15, chapter 6, part 1, has been destroyed to such an extent that the improvements or personal property has been rendered unsuitable for its previous use by natural disaster, adjust the taxable value on the property, accounting for the destruction.

(2) The county treasurer shall adjust the tax due and payable for the current year on the property under 15-16-102 or on personal property under 15-16-119 or 15-24-202 as provided in subsection (3) of this section.

(3) To determine the amount of tax due for destroyed property, the county treasurer shall:

(a) multiply the amount of tax levied and assessed on the original taxable value of the property for the year by the ratio that the number of days in the year that the property existed before destruction bears to 365; and

(b) multiply the amount of tax levied and assessed on the adjusted taxable value of the property for the remainder of the year by the ratio that the number of days remaining in the year after the destruction of the property bears to 365.

(4) This section does not apply to delinquent taxes owed on the destroyed property for a year prior to the year in which the property was destroyed.

(5) A taxpayer receiving a reduction in taxes on personal property under this section shall notify the department if the taxpayer replaces the destroyed personal property in the same tax year that the personal property was destroyed. The tax on the personal property replacing the destroyed personal property must be prorated according to the ratio that the number of days remaining in the year after the property was replaced bears to 365. A taxpayer who fails to

notify the department within 30 days from the date of the replacement of the personal property is subject to the penalty prescribed in 15-1-303.

(6) For the purposes of this section, "natural disaster" includes but is not limited to fire, flood, earthquake, or wind. A fire is considered a natural disaster regardless of the origin of the fire. However, if the taxpayer is convicted of arson for burning the property, property taxes may not be adjusted. If the taxes had already been adjusted prior to the conviction, the original amount must be collected.

History: En. Sec. 1, Ch. 541, L. 1979; amd. Sec. 1, Ch. 263, L. 1981; amd. Sec. 1, Ch. 317, L. 1985; amd. Sec. 1, Ch. 717, L. 1991; amd. Sec. 13, Ch. 773, L. 1991; amd. Sec. 89, Ch. 27, Sp. L. November 1993.

15-16-612. Refund of tax paid. (1) If the property is destroyed after the property taxes have been paid for the current year, the taxpayer is entitled to a refund of the amount of tax paid in excess of the adjusted amount required by 15-16-611.

(2) A refund must be made as provided for in 15-16-603 through 15-16-605.

History: En. Sec. 2, Ch. 541, L. 1979; amd. Sec. 5, Ch. 539, L. 1993.

15-16-613. Refund of certain taxes paid on migratory property. (1) Subject to the provisions of 15-16-603 through 15-16-605 and upon proof that a property tax was paid in another state on the same property, a taxpayer whose property is assessed under 15-24-303 for a period longer than the actual number of months that the property is located in the state is entitled to a refund, as provided in this section.

(2) To obtain a refund, a taxpayer shall file an application for refund with the board of county commissioners in the county where the property was originally taxed. If a taxpayer receives an order by the board of county commissioners pursuant to 15-16-603, the county shall make the refund within the first quarter of the following fiscal year. The application must be made on a form provided by the department and may require information as prescribed by rule of the department.

(3) The amount of the refund is the difference between the amount of tax paid under 15-24-303 and the tax owed based upon the number of months the property was located in the state for the year. The refund may not exceed the amount of the tax paid.

(4) For the purposes of this section, "month" means any part of a calendar month.

History: En. Sec. 1, Ch. 601, L. 1987; amd. Sec. 1, Ch. 778, L. 1991; amd. Sec. 6, Ch. 539, L. 1993; amd. Sec. 1, Ch. 587, L. 1993; amd. Sec. 1, Ch. 59, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 59 in (1) near beginning substituted "property tax" for "tax"; in (2) near beginning substituted "board of county commissioners" for "county treasurer" and near middle after "15-16-603, the" deleted "taxpayer shall apply for a refund allowed under this section by January 31 following the year of assessment"; and made minor changes in style. Amendment effective March 16, 2001.

Retroactive Applicability: Section 3, Ch. 59, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

Part 7
Cancellations

Part Cross-References

Cancellation of taxes upon reversion to state, 77-2-314.

15-16-701. Personal property taxes five years delinquent — list. (1) It is the duty of each county treasurer to prepare in triplicate and submit to the board of county commissioners of the county, on or before the first Monday of June in each year, a list of personal property taxes that are not a lien on real estate and that have been delinquent for 5 years or more. The list must show the following:

(a) the name and address of the delinquent taxpayer;

(b) the amount of the delinquent taxes, plus interest, penalties, and costs, if any; and

(c) the date the taxes became delinquent.

(2) The list prepared pursuant to subsection (1) may not include personal property taxes that remain uncollected because of bankruptcy or other litigation.

(3) Every county treasurer shall, within the same time, prepare in triplicate and submit to the board of county commissioners of the county a list of all contractual obligations owed to or

held by the county for seed grain, feed, or other relief, the collection of which is barred by the statute of limitations provided in 27-2-202(1). The list must show the following:

(a) the name and address of the person or persons who entered into the contractual obligation;

(b) the name of the contractual obligation, as "seed loan", "feed loan", "promissory note", as applicable; and

(c) the date of obligation, date when the last payment became due, date of the last payment on the obligation, and the date when the collection of the obligation became barred by the statute of limitations provided in 27-2-202(1).

History: En. Sec. 1, Ch. 44, L. 1949; R.C.M. 1947, 84-4215; amd. Sec. 46, Ch. 587, L. 1987; amd. Sec. 1, Ch. 521, L. 1993.

15-16-702. Cancellation of taxes and obligations — filing of lists. Upon receipt of such list or lists and within 30 days thereafter, the board of county commissioners shall examine the same and make any necessary corrections. Thereupon, the board of county commissioners shall make its order canceling all such personal property taxes and contractual obligations contained in the list or lists, as corrected, required by this part to be canceled and spread such order upon its minutes. The order and minutes need not set forth in full the contents of the list or lists, a proper reference therein for their identification being sufficient. When the order is made, the original or copy of the list or lists, as corrected, must be filed with and as a part of the records of the board. One legible copy thereof must be filed with the county clerk and recorder as a public record, and one legible copy thereof must be filed with the county treasurer as a permanent record of his office.

History: En. Sec. 2, Ch. 44, L. 1949; amd. Sec. 11, Ch. 126, L. 1977; R.C.M. 1947, 84-4216; amd. Sec. 47, Ch. 587, L. 1987.

15-16-703. Adjustment of accounts after cancellation. Upon notification of the order for cancellation, the county clerk and recorder and county treasurer shall adjust their taxes-receivable accounts to conform to the order of cancellation.

History: En. Sec. 3, Ch. 44, L. 1949; R.C.M. 1947, 84-4217; amd. Sec. 48, Ch. 587, L. 1987.

15-16-704. Certain unpaid taxes uncollectible — stricken from records. All unpaid taxes constituting a lien on real property in the state, levied and assessed against real property which have remained delinquent more than 10 years prior to July 1, 1976, whether the levy be by general or special assessment or by the state or any county, city, or political subdivision of the state, are hereby declared to be uncollectible and stricken from the respective tax records.

History: En. 84-4175.1 by Sec. 1, Ch. 286, L. 1975; R.C.M. 1947, 84-4175.1; amd. Sec. 49, Ch. 587, L. 1987.

Part 8
Suspensions

15-16-801. Payment of suspended delinquent property taxes. If collection of delinquent property taxes has been suspended in accordance with Title 15, chapter 24, part 17, but the purchaser of the commercial property fails to comply with any of the provisions of the resolution granting suspension under Title 15, chapter 24, part 17, the governing body that adopted the resolution may revoke the suspension. Upon revocation, the tax lien for the delinquent taxes, penalties, and interest is reinstated. Penalties and interest are to be calculated from the date of delinquency as if there had been no suspension of collection of the delinquent taxes.

History: En. Sec. 12, Ch. 631, L. 1989.

15-16-802. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. Sec. 1, Ch. 699, L. 1989.

15-16-803. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. Sec. 2, Ch. 699, L. 1989.

CHAPTER 17

TAX SALES

Part 1 — Notice of and Protest of Sale

15-17-101. Repealed.
15-17-102. Repealed.
15-17-103 through 15-17-110 reserved.
15-17-111. Repealed.
15-17-112. Repealed.
15-17-113. Repealed.
15-17-114 through 15-17-120 reserved.
15-17-121. Definitions.
15-17-122. Notice of pending tax sale.
15-17-123. Copy of notice to be filed with county clerk — affidavit.
15-17-124. Irregular assessment.

Part 2 — Sale

15-17-201 through 15-17-208. Repealed.
15-17-209 and 15-17-210 reserved.
15-17-211. Conduct of tax sale.
15-17-212. Tax sale certificate.
15-17-213. Treasurer to record tax sales.
15-17-214. County as purchaser — assignment.

Part 3 — Procedure After Sale

15-17-301 through 15-17-305. Repealed.
15-17-306 through 15-17-310 reserved.
15-17-311. Repealed.
15-17-312. Repealed.
15-17-313 through 15-17-315 reserved.
15-17-316. Definitions.
15-17-317. Municipality as purchaser.
15-17-318. Assignment of municipality's interest.
15-17-319. Sale or lease and disposition of proceeds from lands acquired by municipality.
15-17-320. Taxes and subsequent installments of special assessments on land acquired by a municipality.
15-17-321. Resale for nonpayment.
15-17-322. Disposition of money from tax sale.
15-17-323. Assignment of rights — form.
15-17-324. Assessment of property sold at tax sale.
15-17-325. Sale not voided by misnomer of ownership.
15-17-326. Voided sale — refund — limitation on action for royalty interest.

Parts 4 through 8 reserved

Part 9 — Sale of Personal Property

15-17-901. Repealed.
15-17-902. Repealed.
15-17-903. Repealed.
15-17-904 through 15-17-910 reserved.
15-17-911. Sale of personal property for delinquent taxes — fee — disposition of proceeds — unsold property.

Chapter Cross-References

Sale to include municipal taxes, 7-6-4414, 7-6-4423.

Suspension of property taxes for persons in military services — collection procedures abated, 10-1-606.

Statute of limitations on recovery of property seized by tax collector, 27-2-210.

Injunction to prevent sale or deed for nonpayment of taxes that would lessen value of insurer under Insurers Supervision, Rehabilitation, and Liquidation Act, 33-2-1309.

Tax sale for collection of unpaid irrigation district assessment, 85-7-2151.

Tax sale for collection of unpaid drainage district assessment, 85-8-603.

Part 1
Notice of and Protest of Sale

15-17-101. Repealed. Sec. 59, Ch. 587, L. 1987.

History: (1)En. Sec. 107, p. 110, L. 1891; amd. Sec. 3873, Pol. C. 1895; amd. Sec. 1, p. 142, L. 1901; re-en. Sec. 2629, Rev. C. 1907; re-en. Sec. 2182, R.C.M. 1921; Cal. Pol. C. Sec. 3764; amd. Sec. 8, Ch. 96, L. 1923; re-en. Sec. 2182, R.C.M. 1935; amd. Sec. 1, Ch. 26, L. 1939; Sec. 84-4117, R.C.M. 1947; (2)En. Sec. 109, p. 110, L. 1891; re-en. Sec. 3875, Pol. C. 1895; re-en. Sec. 2631, Rev. C. 1907; re-en. Sec. 2184, R.C.M. 1921; Cal. Pol. C. Sec. 3766; re-en. Sec. 2184, R.C.M. 1935; Sec. 84-4118, R.C.M. 1947; (3)En. Sec. 110, p. 110, L. 1891; re-en. Sec. 3876, Pol. C. 1895; re-en. Sec. 2632, Rev. C. 1907; re-en. Sec. 2185, R.C.M. 1921; Cal. Pol. C. Sec. 3768; re-en. Sec. 2185, R.C.M. 1935; Sec. 84-4119, R.C.M. 1947; (4)En. Sec. 111, p. 110, L. 1891; re-en. Sec. 3877, Pol. C. 1895; re-en. Sec. 2633, Rev. C. 1907; re-en. Sec. 2186, R.C.M. 1921; Cal. Pol. C. Sec. 3768; re-en. Sec. 2186, R.C.M. 1935; Sec. 84-4120, R.C.M. 1947; R.C.M. 1947, 84-4117, 84-4118, 84-4119, 84-4120; amd. Sec. 1, Ch. 122, L. 1985.

15-17-102. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 112, p. 110, L. 1891; re-en. Sec. 3878, Pol. C. 1895; re-en. Sec. 2634, Rev. C. 1907; re-en. Sec. 2187, R.C.M. 1921; Cal. Pol. C. Sec. 3769; re-en. Sec. 2187, R.C.M. 1935; R.C.M. 1947, 84-4121.

15-17-103 through 15-17-110 reserved.

15-17-111. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 147, p. 118, L. 1891; re-en. Sec. 3915, Pol. C. 1895; re-en. Sec. 2671, Rev. C. 1907; re-en. Sec. 2224, R.C.M. 1921; Cal. Pol. C. Sec. 3806; re-en. Sec. 2224, R.C.M. 1935; R.C.M. 1947, 84-4179.

15-17-112. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 151, p. 118, L. 1891; re-en. Sec. 3920, Pol. C. 1895; re-en. Sec. 2676, Rev. C. 1907; re-en. Sec. 2229, R.C.M. 1921; re-en. Sec. 2229, R.C.M. 1935; R.C.M. 1947, 84-4184.

15-17-113. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 152, p. 119, L. 1891; re-en. Sec. 3921, Pol. C. 1895; re-en. Sec. 2677, Rev. C. 1907; re-en. Sec. 2230, R.C.M. 1921; re-en. Sec. 2230, R.C.M. 1935; R.C.M. 1947, 84-4185; amd. Sec. 4, Ch. 17, L. 1985.

15-17-114 through 15-17-120 reserved.

15-17-121. Definitions. Except as otherwise specifically provided, when terms mentioned in Title 15, chapters 17 and 18, are used in connection with taxation, they are defined in the following manner:

(1) "Certificate" or "tax sale certificate" means the document described in 15-17-212.

(2) (a) "Cost" means the cost incurred by the county as a result of a taxpayer's failure to pay taxes when due. It includes but is not limited to any actual out-of-pocket expenses incurred by the county plus the administrative cost of:

(i) preparing the list of delinquent taxes;

(ii) preparing the notice of pending tax sale;

(iii) conducting the tax sale;

(iv) assigning the county's interest in a tax lien to a third party;

(v) identifying interested persons entitled to notice of the pending issuance of a tax deed;

(vi) notifying interested persons;

(vii) issuing the tax deed; and

(viii) any other administrative task associated with accounting for or collecting delinquent taxes.

(b) Cost does not include the costs incurred by the owner of a property tax lien other than the county.

(3) "County" means any county government and includes those classified as consolidated governments.

(4) "Property tax lien" means a lien acquired by the payment at a tax sale of all outstanding delinquent taxes, including penalties, interest, and costs.

(5) "Purchaser" means any person, other than the person to whom the property is assessed, who pays at the tax sale the delinquent taxes, including penalties, interest, and costs, and receives a certificate representing a lien on the property or who is otherwise listed as the purchaser. An assignee is a purchaser.

(6) "Tax", "taxes", or "property taxes" means all ad valorem property taxes, property assessments, fees related to property, and assessments for special improvement districts and rural special improvement districts.

(7) "Tax sale" means:

(a) with respect to real property and improvements, the offering for sale by the county treasurer of a property tax lien representing delinquent taxes, including penalties, interest, and costs; and

(b) with respect to personal property, the offering for sale by the county treasurer of personal property on which the taxes are delinquent or other personal property on which the delinquent taxes are a lien.

History: **En. Sec. 1, Ch. 587, L. 1987; amd. Sec. 2, Ch. 704, L. 1989.**

15-17-122. Notice of pending tax sale. (1) The county treasurer shall publish or post a notice of pending tax sale. The notice must include:

(a) the specific time, date, and place an interest in the property on which the taxes are delinquent will be offered for sale;

(b) a statement that the delinquent taxes, including penalties, interest, and costs, are a lien upon the property and that unless the delinquent taxes, penalties, interest, and costs are paid prior to the time of the tax sale, the lien will be offered for sale at the time and place specified in subsection (1)(a).

(2) The notice required in subsection (1) must also include a statement that a list of each property on which the taxes are delinquent is on file in the office of the county treasurer and open to inspection. The list must include:

(a) the name and address of the person to whom the delinquent taxes are assessed;

(b) the amounts of the delinquent taxes, all accrued penalties, interest, and other costs; and

(c) a statement that penalties, interest, and costs will be added to delinquent taxes.

(3) The notice must be published once a week for 3 consecutive weeks in the newspaper designated for county printing as provided in 7-5-2411. If no newspaper is published in the county, the notice must be posted by the county treasurer in three public places. The notice must be first published or posted on or before the last Monday in June.

(4) Except as provided in 15-17-211(2), the sale may not be held less than 21 days or more than 28 days from the date of first publication or first day the notice is posted.

(5) The sale must be held at the county courthouse.

(6) Property on which taxes are delinquent but for which proper notification was not made may not be included in the current year's notice and sale. In the event of improper notification, the sale may be held on all property properly noticed.

(7) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

History: **En. Sec. 2, Ch. 587, L. 1987; amd. Sec. 9, Ch. 631, L. 1989.**

Cross-References

Delinquent city or town taxes to be included, 7-6-4414, 7-6-4423.

15-17-123. Copy of notice to be filed with county clerk — affidavit. (1) Immediately following publication or posting of the notice required in 15-17-122, the county treasurer shall file a copy of the notice with the county clerk. The copy must be accompanied by an affidavit signed by the county treasurer stating:

(a) the name of the newspaper and its address of publication; and

(b) the dates the notice was published.

(2) If no newspaper is published in the county, the affidavit must list the locations and date of the posting required by 15-17-122.

(3) The affidavit filed under subsection (1) or (2) is prima facie evidence of all the facts stated therein.

History: **En. Sec. 3, Ch. 587, L. 1987.**

15-17-124. Irregular assessment. If the county treasurer discovers, prior to the tax sale, that property on which the taxes are delinquent has been irregularly assessed, the county treasurer may not offer the property or a property tax lien for sale. The taxes on the property must be listed on the property tax record as uncollected for the year in which they were due, and they must be assessed and collected during the succeeding year as taxes are regularly assessed and collected.

History: En. Sec. 4, Ch. 587, L. 1987; amd. Sec. 90, Ch. 27, Sp. L. November 1993.

Part 2
Sale

Part Cross-References

Injunction to prevent sale or deed for nonpayment of taxes that would lessen value of insurer under Insurers Supervision, Rehabilitation, and Liquidation Act, 33-2-1309.

Interest of purchaser at tax sale when land sold was being purchased from state, 77-2-315.

15-17-201 through 15-17-208. Repealed. Sec. 59, Ch. 587, L. 1987.

Compiler's Comments

Histories of Repealed Sections:

15-17-201. (1)En. Sec. 1732, 5th Div. Comp. Stat. 1887; amd. Sec. 36, p. 96, Ex. L. 1887; amd. Sec. 113, p. 111, L. 1891; amd. Sec. 3880, Pol. C. 1895; re-en. Sec. 2636, Rev. C. 1907; re-en. Sec. 2189, R.C.M. 1921; re-en. Sec. 2189, R.C.M. 1935; Sec. 84-4122, R.C.M. 1947; (2)En. Sec. 114, p. 111, L. 1891; re-en. Sec. 3881, Pol. C. 1895; re-en. Sec. 2637, Rev. C. 1907; re-en. Sec. 2190, R.C.M. 1921; re-en. Sec. 2190, R.C.M. 1935; Sec. 84-4123, R.C.M. 1947; R.C.M. 1947, 84-4122, 84-4123.

15-17-202. En. Sec. 115, p. 111, L. 1891; re-en. Sec. 3882, Pol. C. 1895; re-en. Sec. 2638, Rev. C. 1907; re-en. Sec. 2191, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1923; amd. Sec. 1, Ch. 31, L. 1929; re-en. Sec. 2191, R.C.M. 1935; amd. Sec. 1, Ch. 170, L. 1947; R.C.M. 1947, 84-4124(part).

15-17-203. En. Sec. 117, p. 111, L. 1891; re-en. Sec. 3884, Pol. C. 1895; re-en. Sec. 2640, Rev. C. 1907; re-en. Sec. 2193, R.C.M. 1921; re-en. Sec. 2193, R.C.M. 1935; R.C.M. 1947, 84-4126.

15-17-204. (1)En. Sec. 118, p. 111, L. 1891; re-en. Sec. 3885, Pol. C. 1895; re-en. Sec. 2641, Rev. C. 1907; re-en. Sec. 2194, R.C.M. 1921; Cal. Pol. C. Sec. 3776; re-en. Sec. 2194, R.C.M. 1935; Sec. 84-4127, R.C.M. 1947; (2)En. Sec. 119, p. 112, L. 1891; re-en. Sec. 3886, Pol. C. 1895; re-en. Sec. 2642, Rev. C. 1907; re-en. Sec. 2195, R.C.M. 1921; re-en. Sec. 2195, R.C.M. 1935; Sec. 84-4128, R.C.M. 1947; (3)En. Sec. 125, p. 113, L. 1891; re-en. Sec. 3892, Pol. C. 1895; re-en. Sec. 2648, Rev. C. 1907; re-en. Sec. 2204, R.C.M. 1921; re-en. Sec. 2204, R.C.M. 1935; Sec. 84-4135, R.C.M. 1947; R.C.M. 1947, 84-4127, 84-4128, 84-4135.

15-17-205. En. Sec. 120, p. 112, L. 1891; re-en. Sec. 3887, Pol. C. 1895; re-en. Sec. 2643, Rev. C. 1907; re-en. Sec. 2196, R.C.M. 1921; re-en. Sec. 2196, R.C.M. 1935; amd. Sec. 1, Ch. 191, L. 1939; R.C.M. 1947, 84-4129.

15-17-206. En. Sec. 121, p. 112, L. 1891; re-en. Sec. 3888, Pol. C. 1895; re-en. Sec. 2644, Rev. C. 1907; re-en. Sec. 2197, R.C.M. 1921; re-en. Sec. 2197. R.C.M. 1935; amd. Sec. 1, Ch. 8, L. 1967; R.C.M. 1947, 84-4130.

15-17-207. En. Sec. 115, p. 111, L. 1891; re-en. Sec. 3882, Pol. C. 1895; re-en. Sec. 2638, Rev. C. 1907; re-en. Sec. 2191, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1923; amd. Sec. 1, Ch. 31, L. 1929; re-en. Sec. 2191, R.C.M. 1935; amd. Sec. 1, Ch. 170, L. 1947; R.C.M. 1947, 84-4124(part); amd. Sec. 5, Ch. 17, L. 1985.

15-17-208. En. Sec. 115, p. 111, L. 1891; re-en. Sec. 3882, Pol. C. 1895; re-en. Sec. 2638, Rev. C. 1907; re-en. Sec. 2191, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1923; amd. Sec. 1, Ch. 31, L. 1929; re-en. Sec. 2191, R.C.M. 1935; amd. Sec. 1, Ch. 170, L. 1947; R.C.M. 1947, 84-4124(part).

15-17-209 and 15-17-210 reserved.

15-17-211. Conduct of tax sale. (1) On the date and at the time and place specified in the notice, the county treasurer shall, except as provided in 15-17-124, begin the tax sale of all property described in the list required in 15-17-122(2). The tax sale must continue until the county treasurer declares it over, but must continue for a period of not less than 1 day. The treasurer is not required to read the list but shall make a copy of the list available for public inspection during regular business hours.

(2) The treasurer may postpone the day of commencing the sale on a day-to-day basis without publishing a new notice, provided that the sale is held within 3 weeks from the day first fixed.

(3) Property assessed under 15-17-324 that has not been sold to a purchaser other than the county may, at the discretion of the county treasurer, be offered for sale at tax sales subsequent to the sale at which it was first offered.

History: En. Sec. 5, Ch. 587, L. 1987.

Cross-References

Purchase of land by irrigation district, 85-7-2157.

15-17-212. Tax sale certificate. (1) After receiving proof of mail notice to the person to whom the property was assessed, as required by subsection (3), and upon receipt of all delinquent taxes, penalties, interest, and costs, the county treasurer shall prepare a tax sale certificate that must contain:

(a) the date on which the property taxes became delinquent;

(b) the date on which a property tax lien was sold at a tax sale;

(c) the name and address of record of the person to whom the taxes were assessed;

(d) a description of the property on which the taxes were assessed;

(e) the name and mailing address of the purchaser;

(f) the amount paid to liquidate the delinquency, including a separate listing of the amount of the delinquent taxes, penalties, interest, and costs;

(g) a statement that the certificate represents a lien on the property that may lead to the issuance of a tax deed for the property;

(h) a statement specifying the date on which the purchaser will be entitled to a tax deed; and

(i) an identification number corresponding to the tax sale certificate number recorded by the county treasurer as required in 15-17-213.

(2) The certificate must be signed by the county treasurer and delivered to the purchaser. A copy of the certificate must be filed by the treasurer in the office of the county clerk. A copy of the certificate must also be mailed to the person to whom the taxes were assessed, at the address of record, together with a notice that the person may contact the county treasurer for further information on property tax sales.

(3) Prior to paying delinquent taxes, penalties, interests, and costs received by the county treasurer under subsection (1), a person shall send notice of the proposed payment, by certified mail, to the person to whom the property was assessed. The form of the notice must be adopted by the department by rule. The notice must have been mailed at least 2 weeks prior to the date of the payment. The person making the payment shall provide proof of the mailing.

History: En. Sec. 6, Ch. 587, L. 1987; amd. Sec. 2, Ch. 472, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 472 in (1) at beginning inserted "After receiving proof of mail notice to the person to whom the property was assessed, as required by subsection (3), and"; in (2) inserted second sentence requiring copy of certificate to be mailed to person assessed taxes along with notice regarding property tax sale; inserted (3) requiring 2 weeks' notice of proposed payment by certified mail and proof of mailing prior to payment of delinquent taxes, penalties, interests, and costs; and made minor changes in style. Amendment effective October 1, 2001.

15-17-213. Treasurer to record tax sales. Prior to delivering the tax sale certificate to the purchaser, the county treasurer shall make a record of the tax sale. The record must include:

(1) the name and address of the purchaser;

(2) the date on which the tax lien was purchased;

(3) a description of the property on which the certificate is a lien, which description must correspond to the description listed on the certificate;

(4) the amount paid to liquidate the delinquency, including a separate listing of the amount of the delinquent taxes, penalties, interest, and costs; and

(5) a number identifying the tax sale certificate issued upon payment of the delinquency.

History: En. Sec. 7, Ch. 587, L. 1987.

15-17-214. County as purchaser — assignment. (1) If no person pays the delinquent taxes, including penalties, interest, and costs, on the first day of the tax sale, the county is considered to be the purchaser.

(2) (a) After the 21st day following the first day of the tax sale, the county treasurer shall identify and list all property that was sold at the tax sale. He shall also record that the county is the purchaser of all property remaining unsold and upon which the taxes remain delinquent.

(b) The record of the property in which the county is listed as the purchaser may be made by the treasurer by a separate tax sale certificate of each property or by reference to the property as recorded in the list required under 15-16-301.

(3) A property tax lien of the county in any property acquired by the county under subsection (1) must be assigned by the county treasurer as provided in 15-17-323 upon the payment of all delinquent taxes, including penalties, interest, and costs specified in 15-17-323.

History: En. Sec. 8, Ch. 587, L. 1987.

Cross-References

Assignment of rights by county, 15-17-323.

Assessment of county tax deed lands, 15-17-324.
Redemption proceeds distribution, 15-18-114.
County authorized to acquire property by taxation, 70-1-204.
Payment of delinquent irrigation district assessments, 85-7-2136.
Issuance of debenture certificate to irrigation district when land struck off to county, 85-7-2152.
Payment of delinquent drainage district assessments, 85-8-601.

Part 3
Procedure After Sale

15-17-301 through 15-17-305. Repealed. Sec. 59, Ch. 587, L. 1987.

Compiler's Comments

Histories of Repealed Sections:

15-17-301. En. Sec. 116, p. 111, L. 1891; re-en. Sec. 3883, Pol. C. 1895; re-en. Sec. 2639, Rev. C. 1907; re-en. Sec. 2192, R.C.M. 1921; re-en. Sec. 2192, R.C.M. 1935; R.C.M. 1947, 84-4125.

15-17-302. En. Sec. 2, Ch. 65, L. 1933; re-en. Sec. 2008.2, R.C.M. 1935; R.C.M. 1947, 84-4140.

15-17-303. (1), (2)En. Sec. 1, Ch. 151, L. 1917; re-en. Sec. 2207, R.C.M. 1921; re-en. Sec. 2207, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1937; amd. Sec. 1, Ch. 24, L. 1939; amd. Sec. 1, Ch. 11, L. 1947; Sec. 84-4138, R.C.M. 1947; (3)En. Sec. 2, Ch. 151, L. 1917; re-en. Sec. 2208, R.C.M. 1921; re-en. Sec. 2208, R.C.M. 1935; Sec. 84-4139, R.C.M. 1947; (4)En. Sec. 3, Ch. 65, L. 1933; re-en. Sec. 2208.3, R.C.M. 1935; Sec. 84-4141, R.C.M. 1947; R.C.M. 1947, 84-4138, 84-4139, 84-4141; amd. Sec. 10, Ch. 581, L. 1979; amd. Sec. 3, Ch. 576, L. 1981; amd. Sec. 3, Ch. 6, Sp. L. 1981.

15-17-304. En. Sec. 153, p. 119, L. 1891; re-en. Sec. 3922, Pol. C. 1895; re-en. Sec. 2678, Rev. C. 1907; re-en. Sec. 2231, R.C.M. 1921; Cal. Pol. C. Sec. 3813; re-en. Sec. 2231, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1937; R.C.M. 1947, 84-4186.

15-17-305. En. Sec. 154, p. 119, L. 1891; re-en. Sec. 3923, Pol. C. 1895; re-en. Sec. 2679, Rev. C. 1907; re-en. Sec. 2232, R.C.M. 1921; Cal. Pol. C. Sec. 3814; re-en. Sec. 2232, R.C.M. 1935; R.C.M. 1947, 84-4187; amd. Sec. 9, Ch. 79, L. 1983.

15-17-306 through 15-17-310 reserved.

15-17-311. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 148, p. 118, L. 1891; re-en. Sec. 3916, Pol. C. 1895; re-en. Sec. 2672, Rev. C. 1907; re-en. Sec. 2225, R.C.M. 1921; Cal. Pol. C. Sec. 3807; re-en. Sec. 2225, R.C.M. 1935; R.C.M. 1947, 84-4180.

15-17-312. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 1, Ch. 131, L. 1927; re-en. Sec. 2197.1, R.C.M. 1935; R.C.M. 1947, 84-4131; amd. Sec. 2, Ch. 458, L. 1985.

15-17-313 through 15-17-315 reserved.

15-17-316. Definitions. Unless the context indicates otherwise, as used in 15-17-316 through 15-17-320, the following definitions apply:

(1) "Improvement fund" means, with respect to any special assessments, the fund of the municipality into which collections of the special assessments have been pledged or appropriated.

(2) "Municipality" means, with respect to special assessments levied under Title 7, chapter 12, parts 41 through 46, the city or town that levied such assessments.

History: En. Sec. 8, Ch. 617, L. 1987.

15-17-317. Municipality as purchaser. Whenever property that has been struck off to the county at a tax sale under 15-17-214 is subject to the lien of delinquent special assessments and has not been assigned under 15-17-214 or 15-17-323 at the request of the municipality, the county treasurer shall assign all of the rights of the county acquired in the property at the sale to the municipality upon payment of any delinquent taxes (excluding assessments) and costs, without penalty or interest. The duplicate certificate of sale must be delivered to the treasurer of the municipality, who shall file it. A charge may not be made for the duplicate certificate when the municipality is the purchaser, and the county treasurer shall make an entry "sold to the municipality" on the property tax record opposite the tax. The county treasurer must be credited with the delinquent amount in the settlement. Property sold to the municipality must be held in trust by the municipality for the improvement fund into which the delinquent special assessments are payable.

History: En. Sec. 9, Ch. 617, L. 1987; amd. Sec. 8, Ch. 83, L. 1989; amd. Sec. 91, Ch. 27, Sp. L. November 1993.

15-17-318. Assignment of municipality's interest. (1) At any time after a parcel of land has been acquired by a municipality, as provided in 15-17-317, and has not been redeemed, the treasurer of the municipality shall assign all the rights of the municipality in the property to any person who pays:

(a) the purchase price paid by the municipality;

(b) the delinquent assessments;

(c) interest on the purchase price and delinquent assessments at the rate of 5/6 of 1% a month; and

(d) penalties and costs as provided by law.

(2) The treasurer of the municipality shall execute to such person a certificate of sale for the parcel, which may be in substantially the form provided in 15-17-212 for the assignment of the interests of the county. If the certificate of sale becomes lost or accidentally destroyed by the assignee, the treasurer of the municipality shall issue a duplicate certificate to the assignee after the assignee delivers to the treasurer evidence satisfactory to him, including an affidavit of the assignee, that the certificate has been lost or destroyed.

(3) An assignment by a municipality under this section discharges the trust created under 15-17-317. The municipality may also discharge the trust created under 15-17-317 by paying into the improvement fund the amount of the delinquent assessments and interest accrued thereon.

History: En. Sec. 10, Ch. 617, L. 1987; amd. Sec. 9, Ch. 83, L. 1989.

15-17-319. Sale or lease and disposition of proceeds from lands acquired by municipality. A municipality may sell, donate, or lease property it acquires under 15-17-317 in the same manner as a county may sell, donate, or lease tax-deed property under Title 7, chapter 8, part 23. All money received by the municipality from the sale or lease of the land, after payment of the cost of sale, not to exceed $25, must be paid into the improvement fund to the extent of the delinquent assessments, interest, and penalties. The surplus, if any, must be paid into any revolving fund that secures payment of special assessments or, if there are none, to the general fund of the municipality.

History: En. Sec. 11, Ch. 617, L. 1987; amd. Sec. 2, Ch. 369, L. 1993.

15-17-320. Taxes and subsequent installments of special assessments on land acquired by a municipality. For property that is acquired by a municipality as provided in 15-17-317, subsequent installments of the special assessment or assessments, if any, and other special assessments not then delinquent must be levied, and taxes for the following years must be assessed in the same manner as if the property had not been so acquired. If the special assessments or installments thereof or taxes are not paid when due, the property must again be sold in the manner provided by law and the levies of special assessments, assessments of taxes, and the sale of the property for delinquent special assessments and taxes must continue until the time when the property has been redeemed from such sale.

History: En. Sec. 12, Ch. 617, L. 1987.

15-17-321. Resale for nonpayment. (1) If a purchaser other than the county does not pay the delinquent taxes, including penalties, interest, and costs, before 10 a.m. on the next business day following the day of purchase at a tax sale, the property must be made available for sale for the amount of the delinquent taxes, including penalties, interest, and costs, on the following business day of the sale, except as provided in subsection (2).

(2) If the sale was made on the last day of the tax sale and payment was not received as provided in subsection (1), the county is considered to be the purchaser as provided in 15-17-214.

History: En. Sec. 9, Ch. 587, L. 1987.

15-17-322. Disposition of money from tax sale. All money received from purchasers for delinquent taxes, penalties, interest, and costs must be deposited in the county treasury. The money received, other than costs, must be credited to the various funds to which the taxes would have originally been distributed and in the same proportion as the taxes would have originally been distributed. Any money received for costs or any money remaining after crediting the separate funds must be deposited to the credit of the county general fund.

History: En. Sec. 10, Ch. 587, L. 1987.

Cross-References

Crediting of proceeds to irrigation district, 85-7-2152.

15-17-323. Assignment of rights — form. (1) A tax sale certificate or other official record in which the county is listed as the purchaser must be assigned by the county treasurer to any person who, after providing proof of mail notice to the person to whom the property was assessed, as required by subsection (5), pays to the county the amount of the delinquent taxes, including penalties, interest, and costs, accruing from the date of delinquency.

(2) (a) The assignment made under subsection (1) must be in the form of an assignment certificate in substantially the following form:

I, ..., the treasurer of .... County, state of Montana, hereby certify that a tax sale for tax year 20..., in the county of ...., was held on .... (date), for the purpose of liquidating delinquent assessments, and I further certify that a property tax lien for delinquent taxes in the following property .... (insert property description) was offered for sale and that there was no purchaser of the property tax lien. Accordingly, the county was listed as the purchaser as required by 15-17-214, MCA. As of the date of this certificate, the delinquency, including penalties, interest, and costs amounting to $ ...., has not been liquidated by the person to whom the property was assessed, nor has the delinquency been otherwise redeemed.

Because there has been no liquidation of the delinquency or other redemption, I hereby assign all rights, title, and interest of the county of ...., state of Montana, acquired in such property by virtue of the sale to .... (name and address of assignee) to proceed to obtain a tax deed to the property or receive payment in case of redemption as provided by law.

Witness my hand and official seal of office this .... day of ...., 20...

.... County Treasurer
.... County

(b) A copy of an assignment certificate must be mailed to the person to whom the taxes were assessed, at the address of record, together with a notice that the person may contact the county treasurer for further information on lien assignments and property tax sales.

(3) An assignment made by a purchaser other than the county, by an assignee of the county, or by a previous assignee may be made for any consideration whatsoever. An assignment so made is legal and binding only upon filing with the county treasurer a statement that the purchaser's or other assignee's interest in the property has been assigned. The statement must contain:

(a) the name and address of the new assignee;

(b) the name and address of the original purchaser of the tax sale certificate;

(c) the name and address of each previous assignee, if any;

(d) a description of the property upon which the property tax lien was issued, which must contain the same information as contained in the tax sale certificate or assignment certificate, as appropriate;

(e) the signature of the party, whether it is the purchaser or the assignee, making the assignment;

(f) the signature of the new assignee; and

(g) the date on which the statement was signed.

(4) If the certificate described in subsection (1) or the statement described in subsection (3) is lost or destroyed, the county treasurer shall, upon adequate proof and signed affidavit by the assignee that loss or destruction has occurred, issue a duplicate certificate to the assignee.

(5) Prior to making a payment under subsection (1), a person shall send notice of the proposed payment, by certified mail, to the person to whom the property was assessed. The form of the notice must be adopted by the department by rule. The notice must have been mailed at least 2 weeks prior to the date of the payment. The person making the payment shall provide proof of the mailing.

(6) The provisions of this section apply to any sale of land for which a treasurer's deed was not issued on or before March 5, 1917, or for which a tax deed was not issued on or before April 23, 1987, and the holder of any certificate described in subsection (1) has the same rights, powers, and privileges with regard to securing a deed as any purchaser of land at a tax sale may now have.

History: En. Sec. 11, Ch. 587, L. 1987; amd. Sec. 27, Ch. 51, L. 1999; amd. Sec. 3, Ch. 472, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 472 in (1) in middle inserted "after providing proof of mail notice to the person to whom the property was assessed, as required by subsection (5)"; inserted (2)(b) requiring copy of assignment certificate to be mailed to person assessed taxes; inserted (5) requiring 2 weeks' notice of proposed payment by certified mail and proof of mailing prior to payment of delinquent taxes, penalties, interests, and costs; and made minor changes in style. Amendment effective October 1, 2001.

Cross-References

Assignment of county's interest, 15-17-214.
Purchase by irrigation district, 85-7-2158.

15-17-324. Assessment of property sold at tax sale. (1) The assessment of property on which a tax sale certificate has been issued or for which the county is listed as the purchaser as provided in 15-17-214 continues in the same manner as other property is assessed.

(2) If any assessed taxes are not paid when due, they are delinquent.

History: En. Sec. 12, Ch. 587, L. 1987.

Cross-References

Redemption proceeds distribution, 15-18-114.

15-17-325. Sale not voided by misnomer of ownership. When a tax sale certificate is acquired as provided in 15-17-212 or when the county is listed as the purchaser as provided in 15-17-214 and the taxes were properly assessed on the property of a particular person, no misnomer of ownership or other mistake relating to ownership affects the sale or renders it void or voidable.

History: En. Sec. 13, Ch. 587, L. 1987.

15-17-326. Voided sale — refund — limitation on action for royalty interest. (1) If a tax sale held under the provisions of this chapter is declared void by a court for irregularity in the assessment, levy, or sale, the money paid by the purchaser at the sale or by any assignee must be refunded, with interest at the rate payable upon delinquencies as provided in 15-16-102 from the date of the payment, to the purchaser or owner of the tax sale certificate, together with any penalty paid by the purchaser.

(2) Following the payment of a refund as provided in subsection (1), the county is considered the purchaser and has a property tax lien upon the property for the legal taxes on the property accruing from the date of delinquency, plus penalties and interest as provided in 15-16-102. Any money refunded that was received as provided in 15-17-212 and distributed by the treasurer to the state or a city, town, or district must be charged to the state, city, town, or district, respectively, by the treasurer and deducted from the next money due the state, city, town, or district on account of taxes paid or collected. A purchaser of a property tax lien or owner thereof by assignment where sales have been made by a city or town which by resolution or ordinance collects its own taxes instead of having the same collected by the county treasurer must be reimbursed in similar manner and in similar circumstances out of the city or town treasury upon order of the mayor or, where applicable, the city manager or chairman of the city commission. The city or town clerk or city or town treasurer, as appropriate, shall make proper charges and deductions against the respective funds of the city or town upon the next collection of taxes by the city or town.

(3) The purchaser has a lien upon the property for the amount of taxes, penalties, interest, and costs paid, with the interest to be at the rate specified for delinquencies in 15-16-102. If the purchaser is in possession of the property and resides thereon, he may not be ejected from the property until his lien has been liquidated.

(4) All affirmative defenses at law or equity, including but not limited to estoppel, laches, and adverse possession, may apply in a suit brought to challenge the title to a royalty interest in land claimed to have been acquired by a county by tax deed.

(5) An action against a county to recover a royalty interest in land acquired by the county by tax deed must be brought within the period prescribed in 27-2-210.

History: En. Sec. 14, Ch. 587, L. 1987.

Parts 4 through 8 reserved

Part 9
Sale of Personal Property

Part Cross-References

Applicable to collection of liens for county licenses, 7-21-2104.

Injunction to prevent sale or deed for nonpayment of taxes that would lessen value of insurer under Insurers Supervision, Rehabilitation, and Liquidation Act, 33-2-1309.

15-17-901. Repealed. Sec. 59, Ch. 587, L. 1987.

History: (1)En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R.C.M. 1921; Cal. Pol. C. Sec. 3821; amd. Sec. 2, Ch. 102, L. 1923; re-en. Sec. 2239, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963; amd. Sec. 83, Ch. 405, L. 1973; amd. Sec. 1, Ch. 162; amd. Sec. 1, Ch. 475, L. 1975; amd. Sec. 1, Ch. 105, L. 1977; Sec. 84-4202, R.C.M. 1947; (2)En. Sec. 3942, Pol. C. 1895; re-en. Sec. 2685, Rev. C. 1907; re-en. Sec. 2240, R.C.M. 1921; Cal. Pol. C. Sec. 3822; re-en. Sec. 2240, R.C.M. 1935; Sec. 84-4203, R.C.M. 1947; (3)En. Sec. 135, p. 116, L. 1891; re-en. Sec. 3902, Pol. C. 1895; re-en. Sec. 2658, Rev. C. 1907; re-en. Sec. 2241, R.C.M. 1921; re-en. Sec. 2241, R.C.M. 1935; Sec. 84-4204, R.C.M. 1947; (4)En. Sec. 137, p. 116, L. 1891; re-en. Sec. 3904, Pol. C. 1895; re-en. Sec. 2660, Rev. C. 1907; re-en. Sec. 2243, R.C.M. 1921; re-en. Sec. 2243, R.C.M. 1935; Sec. 84-4205, R.C.M. 1947; (5)En. Sec. 138, p. 116, L. 1891; re-en. Sec. 3905, Pol. C. 1895; re-en. Sec. 2661, Rev. C. 1907; re-en. Sec. 2244, R.C.M. 1921; re-en. Sec. 2244, R.C.M. 1935; Sec. 84-4206, R.C.M. 1947; R.C.M. 1947, 84-4202(3), 84-4203, 84-4204, 84-4205, 84-4206.

15-17-902. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 139, p. 116, L. 1891; re-en. Sec. 3906, Pol. C. 1895; re-en. Sec. 2662, Rev. C. 1907; re-en. Sec. 2245, R.C.M. 1921; re-en. Sec. 2245, R.C.M. 1935; R.C.M. 1947, 84-4207.

15-17-903. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 140, p. 116, L. 1891; amd. Sec. 3907, Pol. C. 1895; re-en. Sec. 2663, Rev. C. 1907; re-en. Sec. 2246, R.C.M. 1921; re-en. Sec. 2246, R.C.M. 1935; R.C.M. 1947, 84-4208.

15-17-904 through 15-17-910 reserved.

15-17-911. Sale of personal property for delinquent taxes — fee — disposition of proceeds — unsold property. (1) The tax on personal property may be collected and payment enforced by the seizure and sale of any personal property in the possession of the person assessed. Seizure and sale are authorized at any time after the date the taxes become delinquent or by the institution of a civil action for its collection in any court of competent jurisdiction. A resort to one method does not bar the right to resort to any other method. Any of the methods provided may be used until the full amount of the tax is collected.

(2) The provisions of 15-16-119 and this section apply to a seizure and sale under subsection (1).

(3) (a) A sale under subsection (1) must be:

(i) conducted at public auction;

(ii) conducted under the provisions of 25-13-701(1)(b); and

(iii) noticed as a treasurer's sale of personal property seized for taxes.

(b) The return on the levy and sale must be signed by the sheriff or deputy sheriff as ex officio deputy county treasurer.

(4) (a) The county treasurer shall charge $25 or a fee set by the county commissioners, plus the cost, as defined in 15-17-121, of the collection of delinquent personal property taxes. The cost must be assessed against the delinquent taxpayer and is in addition to any sheriff's fees, mileage, and costs charged under subsection (4)(b).

(b) The sheriff is entitled to the fees, mileage, and costs as provided in 7-32-2141 and 7-32-2143, which must be assessed against the delinquent taxpayer.

(5) On payment of the price bid for any property sold as provided in this section, delivery of the property, with a bill of sale, vests the title of the property in the purchaser.

(6) (a) After sale of the property, the proceeds of the sale must be used first to reimburse the county for all costs and charges incurred in seizing the property and conducting the sale. Any excess, up to the total amount of the taxes owed, must be distributed proportionally to the funds that would have received the taxes if they had been paid before becoming delinquent. Any remaining excess, up to the amount of the penalty and interest owed, must then be distributed proportionally to the fund that would have received the penalty and interest if they had been paid in full.

(b) Any money collected in excess of the delinquent tax, penalties, interest, costs, and charges must be returned to the person owning the property prior to the sale, if known. If the person does not claim the excess immediately following the sale, the treasurer shall deposit the money in the county treasury for a period of 1 year from the date of sale. If the person has not claimed the excess within 1 year from the date of sale, the county treasurer shall deposit the amount in the county general fund and the person has no claim to it.

(7) Any property seized for the purpose of liquidating a delinquency by a tax sale that remains unsold following a sale may be left at the place of sale at the risk of the owner.

(8) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

(9) The county commission, in its discretion, may cancel any personal property taxes, including penalty, interest, costs, and charges that remain unsatisfied after the property upon which the taxes were assessed had been seized and sold. If the taxes are canceled, one copy of the order of cancellation must be filed with the county clerk and recorder and one copy with the county treasurer.

History: En. Sec. 15, Ch. 587, L. 1987; amd. Sec. 10, Ch. 631, L. 1989; amd. Sec. 1, Ch. 36, L. 1993; amd. Sec. 92, Ch. 27, Sp. L. November 1993; amd. Sec. 3, Ch. 197, L. 1999.

CHAPTER 18

OWNERSHIP INTERESTS IN LAND SOLD FOR TAXES

Part 1 — Redemption

15-18-101 through 15-18-108. Repealed.
15-18-109 and 15-18-110 reserved.
15-18-111. Time for redemption — interested party.
15-18-112. Redemption from property tax lien — lien on interest in property for taxes paid.
15-18-113. Treasurer to record redemptions.
15-18-114. Distribution of redemption proceeds.

Part 2 — Issuing a Tax Deed

15-18-201 through 15-18-205. Repealed.
15-18-206 through 15-18-210 reserved.
15-18-211. Tax deed — fee.
15-18-212. Notice — proof of notice — penalty for failure to notify.
15-18-213. Form of tax deed — prima facie evidence.
15-18-214. Effect of deed.
15-18-215. Form of notice that tax deed may issue.
15-18-216. Form of proof of notice.
15-18-217. Form of cancellation.
15-18-218. Charge not allowed for filings or recordings made by county treasurer.

Part 3 — Action for Tax Deed
(Repealed. Sec. 59, Ch. 587, L. 1987)

Part 4 — Quiet Title

15-18-401 through 15-18-404. Repealed.
15-18-405 through 15-18-410 reserved.
15-18-411. Action to quiet title to tax deed — notice.
15-18-412. Procedure in tax deed quiet title action.
15-18-413. Title conveyed by deed — defects.

Chapter Cross-References

Interest of purchaser at tax sale when land sold was being purchased from state, 77-2-315.

Part 1
Redemption

Part Cross-References

Redemption of property sold for delinquent irrigation district assessment, 85-7-2151.
Redemption of property sold for delinquent drainage district assessment, 85-8-603.

15-18-101 through 15-18-108. Repealed. Sec. 59, Ch. 587, L. 1987.

Compiler's Comments

Histories of Repealed Sections:

15-18-101. En. Sec. 122, p. 113, L. 1891; amd. Sec. 3889, Pol. C. 1895; re-en. Sec. 2645, Rev. C. 1907; re-en. Sec. 2201, R.C.M. 1921; Cal. Pol. C. Sec. 3780; amd. Sec. 1, Ch. 125, L. 1933; re-en. Sec. 2201, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1941; R.C.M. 1947, 84-4132.

15-18-102. En. Sec. 1, Ch. 98, L. 1913; re-en. Sec. 2210, R.C.M. 1921; re-en. Sec. 2210, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1939; R.C.M. 1947, 84-4154; amd. Sec. 1, Ch. 313, L. 1985.

15-18-103. En. Sec. 1, Ch. 91, L. 1915; amd. Sec. 1, Ch. 73, L. 1919; re-en. Sec. 2211, R.C.M. 1921; amd. Sec. 1, Ch. 48, L. 1923; re-en. Sec. 2211, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1941; amd. Sec. 16, Ch. 52, L. 1977; R.C.M. 1947, 84-4155.

15-18-104. En. Sec. 155, p. 120, L. 1891; re-en. Sec. 3924, Pol. C. 1895; re-en. Sec. 2680, Rev. C. 1907; re-en. Sec. 2233, R.C.M. 1921; Cal. Pol. C. Sec. 3815; re-en. Sec. 2233, R.C.M. 1935; R.C.M. 1947, 84-4188.

15-18-105. En. Sec. 123, p. 113, L. 1891; re-en. Sec. 3890, Pol. C. 1895; re-en. Sec. 2646, Rev. C. 1907; re-en. Sec. 2202, R.C.M. 1921; Cal. Pol. C. Sec. 3781; re-en. Sec. 2202, R.C.M. 1935; R.C.M. 1947, 84-4133.

15-18-106. En. Sec. 124, p. 113, L. 1891; re-en. Sec. 3891, Pol. C. 1895; re-en. Sec. 2647, Rev. C. 1907; re-en. Sec. 2203, R.C.M. 1921; re-en. Sec. 2203, R.C.M. 1935; R.C.M. 1947, 84-4134.

15-18-107. En. Sec. 126, p. 113, L. 1891; re-en. Sec. 3893, Pol. C. 1895; re-en. Sec. 2649, Rev. C. 1907; re-en. Sec. 2205, R.C.M. 1921; re-en. Sec. 2205, R.C.M. 1935; R.C.M. 1947, 84-4136.

15-18-108. En. Sec. 156, p. 120, L. 1891; re-en. Sec. 3925, Pol. C. 1895; re-en. Sec. 2681, Rev. C. 1907; re-en. Sec. 2234, R.C.M. 1921; Cal. Pol. C. Sec. 3816; amd. Sec. 1, Ch. 164, L. 1929; re-en. Sec. 2234, R.C.M. 1935; R.C.M. 1947, 84-4189.

15-18-109 and 15-18-110 reserved.

15-18-111. Time for redemption — interested party. (1) Except as provided in subsection (2), redemption of a property tax lien acquired at a tax sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, the occupant of the property, or any interested party within 36 months from the date of the first day of the tax sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later.

(2) For property subdivided as a residential or commercial lot upon which special improvement district assessments or rural special improvement district assessments are delinquent and upon which no habitable dwelling or commercial structure is situated, redemption of a property tax lien acquired at a tax sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, or any interested party within 24 months from the date of the first day of the tax sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later.

(3) For the purposes of this chapter, an "interested party" includes a mortgagee, vendor of a contract for deed or the vendor's successor in interest, lienholder, or other person who has a properly recorded interest in the property. A person who has an interest in property on which there is a property tax lien but which interest is not properly recorded is not an interested party for the purposes of this chapter.

History: En. Sec. 16, Ch. 587, L. 1987; amd. Sec. 14, Ch. 617, L. 1987; amd. Sec. 1, Ch. 564, L. 1989; amd. Sec. 1, Ch. 248, L. 1995.

Cross-References

Suspension of property taxes for persons in military service, 10-1-606.

Notice of application for tax deed, 15-18-212.

Period of redemption for property sold for delinquent irrigation district assessment, 85-7-2163.

15-18-112. Redemption from property tax lien — lien on interest in property for taxes paid. (1) Except as provided in subsection (4), in all cases in which a property tax lien has been acquired, the purchaser may pay the subsequent taxes assessed against the property.

(2) Upon the redemption of the property from the property tax lien, the redemptioner shall, in addition to the amount for which the property tax lien was sold, including penalties, interest, and costs, pay the subsequent taxes assessed, with interest and penalty at the rate established for delinquent taxes in 15-16-102.

(3) An owner of less than all of the interest or a lienholder with an interest in real property who redeems a property tax lien on the property has a lien for the taxes paid on the interests of the property that are not owned by the redemptioner.

(4) The property tax lien may also be redeemed for a particular tax year by a partial payment of that tax year, as provided in 15-16-102(5), if:

(a) the property tax lien for the year in which the partial payment is made is owned by the county; and

(b) the tax deed has not been issued pursuant to 15-18-211.

History: **En. Sec. 17, Ch. 587, L. 1987; amd. Sec. 4, Ch. 704, L. 1989; amd. Sec. 4, Ch. 444, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 444 inserted (3) providing that a redemptioner of a property tax lien has a lien for taxes paid on any portion of the property not owned by the redemptioner; and made minor changes in style. Amendment effective April 30, 2001.

Retroactive Applicability: Section 7, Ch. 444, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

Cross-References

Payment of delinquent irrigation district assessments credited against redemption, 85-7-2136.

Payment of delinquent drainage district assessments credited against redemption, 85-8-601.

15-18-113. Treasurer to record redemptions. (1) Upon payment of all delinquent taxes, including penalties, interest, and costs, by the person to whom taxes were assessed or the person's agent to the county treasurer and refunded to the person listed as purchaser as provided in 15-17-212(1)(e), 15-17-213, or 15-17-214 or distributed as provided in 15-18-114, the word "redeemed", the date, and the name of the redemptioner must be marked by the county treasurer on the tax sale certificate or in the record required in 15-17-214. Upon redemption the county treasurer shall execute a certificate of redemption to be filed or recorded with the county clerk and recorder.

(2) The form of the certificate of redemption may be made as follows:

CERTIFICATE OF REDEMPTION

I, ..., the treasurer of .... County, certify the following:

1. For tax years .... (years) the taxes were delinquent on the following real property: .... (description of the property).

2. The tax lien on the property was sold on.........(date of the tax sale). Tax Sale Certificate No. ..... or Tax Lien Assignment No. ..... (if applicable).

3. The tax lien was redeemed on .... (date of redemption) by the payment of:

Taxes .....
Penalty .....
Interest .....
Cost .....
Total .....
Receipt Number .....

4. The redemption was made by .... (name of redemptioner).

Date:........

....
Signature

History: **En. Sec. 18, Ch. 587, L. 1987; amd. Sec. 1, Ch. 446, L. 1999.**

15-18-114. Distribution of redemption proceeds. (1) When a property tax lien for which the county is listed as purchaser is redeemed, the money received from the redemption, including penalties and interest but not costs, must be distributed to the credit of the various funds to which the taxes would have originally been distributed and in the same proportion as the taxes would have originally been distributed.

(2) (a) When a property tax lien for which the recorded purchaser is other than the county is redeemed, the county treasurer shall distribute to the person listed as the purchaser on the tax sale certificate and in the record kept by the county treasurer the amount the purchaser paid the county for the property tax lien plus any subsequent amount paid pursuant to 15-18-112 plus interest, as specified in 15-16-102, from the date of payment until the date of redemption. Any money remaining after distributing redemption proceeds to the purchaser other than the county must be distributed pursuant to subsection (1).

(b) (i) The distribution must be made by certified mail, return receipt requested, by the county treasurer to the purchaser at the address listed on the tax sale certificate as provided in 15-17-212(1)(e).

(ii) If the money distributed to the purchaser is returned unopened to the county treasurer, the treasurer shall publish once a week for 2 consecutive weeks in the official newspaper of the county a notice stating that:

(A) the county treasurer is in possession of money belonging to the purchaser for the redemption of the delinquency on the property named in the tax sale certificate;

(B) the money will be held by the county treasurer for a period of 1 year from the date of publication; and

(C) if the money is not claimed by the purchaser within the 1-year period, the purchaser relinquishes all claim to the money and the money will be credited to the county general fund.

(3) The publication required in subsection (2)(b)(ii) must be made at least annually, but the 1-year period described in subsection (2)(b)(ii)(B) may not begin until the date of publication.

(4) The county treasurer shall keep an accurate account of all money paid in redemption, including a separate accounting of other delinquent taxes, interest, penalties, and costs, and when and to whom distributed.

History: En. Sec. 19, Ch. 587, L. 1987; amd. Sec. 3, Ch. 704, L. 1989; amd. Sec. 2, Ch. 97, L. 1993.

Cross-References

Distribution of redemption money for municipal taxes, 7-6-4414.

Definition of school district, 20-15-403.

Distribution of redemption money to irrigation district, 85-7-2154.

Part 2
Issuing a Tax Deed

Part Cross-References

Injunction to prevent sale or deed for nonpayment of taxes that would lessen value of insurer under Insurers Supervision, Rehabilitation, and Liquidation Act, 33-2-1309.

Issuance of certificate of purchase when tax deed issued for land being purchased from state, 77-2-315.

Issuance of tax deed for delinquent irrigation district assessment, 85-7-2159, 85-7-2163.

15-18-201 through 15-18-205. Repealed. Sec. 59, Ch. 587, L. 1987.

Compiler's Comments

Histories of Repealed Sections:

15-18-201. En. Sec. 127, p. 113, L. 1891; re-en. Sec. 3894, Pol. C. 1895; re-en. Sec. 2650, Rev. C. 1907; re-en. Sec. 2206, R.C.M. 1921; Cal. Pol. C. Sec. 3785; re-en. Sec. 2206, R.C.M. 1935; R.C.M. 1947, 84-4137.

15-18-202. En. Sec. 128, p. 114, L. 1891; amd. Sec. 3895, Pol. C. 1895; amd. Sec. 1, Ch. 79, L. 1905; re-en. Sec. 2651, Rev. C. 1907; amd. Sec. 1, Ch. 33, L. 1917; amd. Sec. 1, Ch. 87, L. 1921; re-en. Sec. 2209, R.C.M. 1921; amd. Sec. 1, Ch. 156, L. 1929; amd. Sec. 1, Ch. 190, L. 1933; re-en. Sec. 2209, R.C.M. 1935; R.C.M. 1947, 84-4151; amd. Sec. 14, Ch. 526, L. 1983.

15-18-203. En. Sec. 1, Ch. 92, L. 1927; amd. Sec. 1, Ch. 49, L. 1933; re-en. Sec. 2209.1, R.C.M. 1935; R.C.M. 1947, 84-4152.

15-18-204. En. Sec. 129, p. 114, L. 1891; re-en. Sec. 3896, Pol. C. 1895; re-en. Sec. 2652, Rev. C. 1907; re-en. Sec. 2212, R.C.M. 1921; re-en. Sec. 2212, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1947, 84-4156.

15-18-205. En. Sec. 1748, 5th Div. Comp. Stat. 1887; amd. Sec. 130, p. 115, L. 1891; re-en. Sec. 3897, Pol. C. 1895; re-en. Sec. 2653, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1919; re-en. Sec. 2213, R.C.M. 1921; Cal. Pol. C. Sec. 3786; re-en. Sec. 2213, R.C.M. 1935; R.C.M. 1947, 84-4157.

15-18-206 through 15-18-210 reserved.

15-18-211. Tax deed — fee. (1) Except as provided in subsection (3), if the property tax lien is not redeemed in the time allowed under 15-18-111, the county treasurer shall grant the purchaser a tax deed for the property. The deed must contain the same information as is required in a tax sale certificate under 15-17-212, except the description of the property must be the full legal description, and a statement that the property tax lien was not redeemed during the redemption period provided in 15-18-111.

(2) (a) Except as provided in subsection (2)(b), the county treasurer shall charge the purchaser $25 plus all actual costs incurred by the county in giving the notice or assisting another purchaser or assignee in giving the notice required in 15-18-212 for making the deed, which fee must be deposited in the county general fund.

(b) If the purchaser is the county, no fee may be charged for making the deed.

(c) Reasonable costs incurred by the county in searching the county records to identify persons entitled to notice are considered part of the actual costs of the notice provided in subsection (2)(a).

(3) If the purchaser is the county and no assignment has been made, the county treasurer may not issue a tax deed to the county unless the board of county commissioners, by resolution, directs him to issue a tax deed.

(4) Deeds issued to purchasers must be recorded by the county clerk as provided in Title 7, chapter 4, part 26, except that when the county is the purchaser and subsequent tax deed holder, the county clerk may not charge a fee for recording the deed.

History: En. Sec. 20, Ch. 587, L. 1987.

15-18-212. Notice — proof of notice — penalty for failure to notify. (1) Not more than 60 days prior to and not more than 60 days following the expiration of the redemption period provided in 15-18-111, a notice must be given as follows:

(a) for each property for which there has been issued to the county a tax sale certificate or for which the county is otherwise listed as the purchaser or assignee, the county clerk shall notify all persons considered interested parties in the property and the current occupant of the property, if any, that a tax deed may be issued to the county unless the property tax lien is redeemed prior to the expiration date of the redemption period; or

(b) for each property for which there has been issued a tax sale certificate to a purchaser other than the county or for which an assignment has been made, the purchaser or assignee, as appropriate, shall notify all persons considered interested parties in the property, if any, that a tax deed will be issued to the purchaser or assignee unless the property tax lien is redeemed prior to the expiration date of the redemption period.

(2) (a) Except as provided in subsection (2)(b), if the county is the purchaser, an assignment has not been made, and the board of county commissioners has not directed the county treasurer to issue a tax deed during the period described in subsection (1) but the board of county commissioners at a time subsequent to the period described in subsection (1) does direct the county treasurer to issue a tax deed, the county clerk shall provide notification to all interested parties and the current occupant, if any, in the manner provided in subsection (1)(a). The notification required under this subsection must be made not less than 60 days or more than 120 days prior to the date on which the county treasurer will issue the tax deed.

(b) If the county commissioners direct the county treasurer to issue a tax deed within 6 months after giving the notice required by subsection (1)(a), additional notice need not be given.

(3) (a) If a purchaser other than the county or an assignee fails or neglects to give notice as required by subsection (1)(b) and the failure or neglect is evidenced by failure of the purchaser or assignee to file proof of notice with the county clerk as required in subsection (7), the county treasurer shall notify the purchaser or assignee of the obligation to give notice under subsection (1)(b). The notice of obligation may be sent by certified mail, return receipt requested, to the purchaser or assignee at the address contained on the tax sale certificate provided for in 15-17-212 or on the assignment form provided for in 15-17-323.

(b) If within 120 days after the county treasurer mails the notice of obligation the purchaser or assignee fails to give notice as required by subsection (1)(b), as evidenced by failure to file proof of notice with the county clerk as required in subsection (7), the county treasurer shall cancel the property tax lien evidenced by the tax sale certificate or the assignment. Upon cancellation of the property tax lien, the county treasurer shall file or record with the county clerk and recorder a notice of cancellation on a form provided for in 15-18-217.

(4) The notice required under subsections (1) and (2) must be made by certified mail, return receipt requested, to each interested party and the current occupant, if any, of the property. The address to which the notice must be sent is, for each interested party, the address disclosed by the records in the office of the county clerk and, for the occupant, the street address or other known address of the subject property.

(5) In all cases in which the address of an interested party is not known, the person required to give notice shall, within the period described in subsection (1) or not less than 60 days or more than 120 days prior to the date upon which the county treasurer will otherwise

issue a tax deed, whichever is appropriate, commence publishing once a week for 2 successive weeks, in the official newspaper of the county or another newspaper as the board of county commissioners may by resolution designate, a notice containing the information contained in subsection (6), plus:

(a) the name of the interested party for whom the address is unknown;

(b) a statement that the address of the interested party is unknown;

(c) a statement that the published notice meets the legal requirements for notice of a pending tax deed issuance; and

(d) a statement that the interested party's rights in the property may be in jeopardy.

(6) The notices required by subsections (1), (2), and (5) must contain the following:

(a) a statement that a property tax lien exists on the property as a result of a property tax delinquency;

(b) a description of the property on which the taxes are or were delinquent, which must be the same as the description of the property on the tax sale certificate or in the record described in 15-17-214(2)(b);

(c) the date that the property taxes became delinquent;

(d) the date that the property tax lien attached as the result of a tax sale;

(e) the amount of taxes due, including penalties, interest, and costs, as of the date of the notice of pending tax deed issuance, which amount must include a separate listing of the delinquent taxes, penalties, interest, and costs that must be paid for the property tax lien to be liquidated;

(f) the name and address of the purchaser;

(g) the name of the assignee if an assignment was made as provided in 15-17-323;

(h) the date that the redemption period expires or expired;

(i) a statement that if all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to the date on which the redemption period expires or on or prior to the date on which the county treasurer will otherwise issue a tax deed that a tax deed may be issued to the purchaser on the day following the date on which the redemption period expires or on the date on which the county treasurer will otherwise issue a tax deed; and

(j) the business address and telephone number of the county treasurer who is responsible for issuing the tax deed.

(7) Proof of notice in whatever manner given must be filed with the county clerk. If the purchaser or assignee is other than the county, the proof of notice must be filed with the county clerk within 30 days of the mailing or publishing of the notice. If the purchaser or assignee is the county, the proof of notice must be filed before the issuance of the tax deed under this chapter. Once filed, the proof of notice is prima facie evidence of the sufficiency of the notice.

(8) A county or any officer of a county may not be held liable for any error of notification.

History: En. Sec. 21, Ch. 587, L. 1987; amd. Sec. 10, Ch. 83, L. 1989; amd. Sec. 8, Ch. 704, L. 1989; amd. Sec. 1, Ch. 181, L. 1991; amd. Sec. 3, Ch. 97, L. 1993; amd. Sec. 2, Ch. 446, L. 1999.

Cross-References

Fee for tax deed, 7-6-2131.

Time for redemption, 15-18-111.

County authorized to acquire property by taxation, 70-1-204.

15-18-213. Form of tax deed — prima facie evidence. (1) The form of a tax deed issued under the provisions of this chapter, executed by a county treasurer, must be made in substance as follows:

This deed is made by .... (name of county treasurer), county treasurer of the county of .... (name of county), in the state of Montana, to .... (name of purchaser, the purchaser's agent, or assignee), as provided by the laws of the state of Montana:

Whereas, there was assessed for .... (year) the following real property .... (description of the property); and

Whereas, the taxes for .... (year) levied against the property amounted to $..........; and

Whereas, the taxes were not paid and a property tax lien for the payment of the taxes attached and was sold to .... (name of purchaser or the purchaser's agent or assignee) on .... (date, including year) for the sum of $.........., which amount included delinquent taxes in the amount of $.........., penalties in the amount of $.........., interest in the amount of $.........., and other costs in the amount of $..........; and

Whereas, a tax sale certificate was duly issued and filed or the sale otherwise recorded as required by law; and

Whereas, notice was given to interested parties in accordance with 15-18-212 that the issuance of a tax deed was pending; and

Whereas, the property tax lien has not been redeemed by .... (name of former owner) or any other person entitled to redeem it.

Now, therefore, I, ... (treasurer's name), county treasurer of the county of ...., in the state of Montana, in consideration of the sum of $.......... paid, hereby grant to .... (name of purchaser or the purchaser's agent or assignee) all the property situated in .... County, state of Montana, described in this document.

Witness my hand on this date .... (date, including year).

.................County Treasurer
.......................County

(2) A tax deed executed in substantially the form provided in subsection (1) is prima facie evidence that:

(a) the property was assessed as required by law;

(b) the taxes were levied in accordance with law;

(c) the taxes were not paid when due;

(d) notice of tax sale was given and a property tax lien was sold at the proper time and place as provided by law;

(e) the property was not redeemed, and proper notice of a pending tax deed issuance was made as required by law;

(f) the person who executed the deed was legally authorized to do so; and

(g) if the real property was sold to pay delinquent taxes on personal property, the real property belonged to the person liable to pay the personal property tax.

History: En. Sec. 22, Ch. 587, L. 1987; amd. Sec. 4, Ch. 97, L. 1993.

15-18-214. Effect of deed. (1) A deed issued under this chapter conveys to the grantee absolute title to the property described therein as of the date of the expiration of the redemption period, free and clear of all liens and encumbrances, except:

(a) when the claim is payable after the execution of the deed and:

(i) a property tax lien attaches subsequent to the tax sale; or

(ii) a lien of any special, rural, local improvement, irrigation, or drainage assessment is levied against the property;

(b) when the claim is an easement, servitude, covenant, restriction, reservation, or similar burden lawfully imposed on the property; or

(c) when the land is owned by the United States, this state, or a subdivision of this state.

(2) Under the conditions described in subsection (1), the deed is prima facie evidence of the right of possession accrued as of the date of expiration of the period for redemption or the date upon which a tax deed was otherwise issued.

History: En. Sec. 23, Ch. 587, L. 1987; amd. Sec. 5, Ch. 704, L. 1989.

15-18-215. Form of notice that tax deed may issue. Section 15-18-212 requires that notice be given to all persons considered interested parties and to the current occupant of property that may be lost to a tax deed. The notice may be made as follows:

NOTICE THAT A TAX DEED MAY BE ISSUED

TO:...................... ....
(Name) (Address, when unknown, so state)

Pursuant to section 15-18-212, Montana Code Annotated, NOTICE IS HEREBY GIVEN:

1. As a result of a property tax delinquency, a property tax lien exists on the following described real property in which you may have an interest:

....
....

2. The property taxes became delinquent on ....

3. The property tax lien was attached as the result of a tax sale held on ....

4. The property tax lien was purchased at a tax sale on .... by .... (Name) .... (Address).

5. The lien was subsequently assigned to ....

6. As of the date of this notice, the amount of tax due is:

TAXES:	....
PENALTY:	....
INTEREST:	....
COST:	....
TOTAL:	....

7. For the property tax lien to be liquidated, the total amount listed in paragraph 6 must be paid by ...., which is the date that the redemption period expires or expired.

8. If all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to ...., which is the date the redemption period expires, or on or prior to the date on which the county treasurer will otherwise issue a tax deed, a tax deed may be issued to the purchaser on the day following the date that the redemption period expires or on the date the county treasurer will otherwise issue a tax deed.

9. The business address and telephone number of the county treasurer who is responsible for issuing the tax deed is: .... County Treasurer, ... (Address), ... (Telephone).

FURTHER NOTICE FOR THOSE PERSONS LISTED
ABOVE WHOSE ADDRESSES ARE UNKNOWN:

1. The address of the interested party is unknown.

2. The published notice meets the legal requirements for notice of a pending tax deed issuance.

3. The interested party's rights in the property may be in jeopardy.

DATED at .... this .... (Date).

....
Signature

History: En. Sec. 5, Ch. 97, L. 1993.

15-18-216. Form of proof of notice. Section 15-18-212 requires that proof of notice must be filed with the county clerk. The proof of notice may be made as follows:

PROOF OF NOTICE

I, ... (Name and Address), acting as or on behalf of the owner of the property tax lien, have complied with the notice requirements of Title 15, chapter 18, MCA, as follows:

1. A "Notice of Issuance of Tax Deed" was mailed to the owners, current occupant, and interested parties, as that term is defined in section 15-18-111(3), MCA. A copy of each notice is attached or is on file in the office of the county clerk.

2. The notices were mailed by certified mail, return receipt requested. Copies of the return receipts are attached or are on file in the office of the county clerk.

3. Notice was given to interested parties with unknown addresses by publishing in the official newspaper of the county, which is ...., on .... and .... Proof of publication is attached.

DATED: ....

....
(Signature)

SUBSCRIBED AND SWORN TO before me this .... (Date).

....
Notary Public for the State of Montana
Residing in ....
My Commission Expires ....

History: En. Sec. 6, Ch. 97, L. 1993.

15-18-217. Form of cancellation. The notice of cancellation required by 15-18-212 of a tax lien as evidenced by a tax sale certificate or assignment may be made as follows:

I, ..., the treasurer of .... County, certify that .... (name of the purchaser or the purchaser's agent or assignee) of .... (address), purchased a tax lien ...... (tax sale certificate no. or tax lien assignment no.) on property owned by ...... (name of owner of record). See legal description attached as exhibit "A", Tax Receipt No. ..... on ..... (date).

I further certify that pursuant to 15-18-212(3)(a), notice was given to ...... (name of purchaser or the purchaser's agent or assignee) that the tax lien will be canceled if the purchaser does not comply with provisions of 15-18-212 within 120 days from .... (date of mailing of certified letter).

I further certify that the treasurer of ...... County has no record of notice by the owner of the tax lien in accordance with 15-18-212(7).

Therefore, noncompliance by the assignee has caused the tax lien to be canceled this .... (date).

....
Name of County Treasurer

History: En. Sec. 3, Ch. 446, L. 1999.

15-18-218. Charge not allowed for filings or recordings made by county treasurer. The county clerk and recorder may not impose a charge for tax lien assignments, tax sale certificates, certificates of redemption, or any other form that the county treasurer is required to file or record with the county clerk and recorder.

History: En. Sec. 4, Ch. 446, L. 1999.

Part 3
Action for Tax Deed
(Repealed. Sec. 59, Ch. 587, L. 1987)

Part Compiler's Comments

Histories of Repealed Sections:

15-18-301. En. Sec. 1, Ch. 176, L. 1933; re-en. Sec. 2215.1, R.C.M. 1935; R.C.M. 1947, 84-4162.

15-18-302. En. Sec. 2, Ch. 176, L. 1933; re-en. Sec. 2215.2, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1937; R.C.M. 1947, 84-4163.

15-18-303. En. Sec. 3, Ch. 176, L. 1933; re-en. Sec. 2215.3, R.C.M. 1935; R.C.M. 1947, 84-4164; amd. Sec. 67, Ch. 575, L. 1981.

15-18-304. En. Sec. 4, Ch. 176, L. 1933; re-en. Sec. 2215.4, R.C.M. 1935; R.C.M. 1947, 84-4165.

15-18-305. En. Sec. 5, Ch. 176, L. 1933; re-en. Sec. 2215.5, R.C.M. 1935; amd. Sec. 17, Ch. 52, L. 1977; amd. Sec. 8, Ch. 126, L. 1977; R.C.M. 1947, 84-4166; amd. Sec. 11, Ch. 581, L. 1979.

15-18-306. En. Sec. 6, Ch. 176, L. 1933; re-en. Sec. 2215.6, R.C.M. 1935; R.C.M. 1947, 84-4167.

15-18-307. En. Sec. 7, Ch. 176, L. 1933; re-en. Sec. 2215.7, R.C.M. 1935; R.C.M. 1947, 84-4168.

15-18-308. En. Sec. 8, Ch. 176, L. 1933; re-en. Sec. 2215.8, R.C.M. 1935; amd. Sec. 9, Ch. 126, L. 1977; R.C.M. 1947, 84-4169.

15-18-309. En. Sec. 9, Ch. 176, L. 1933; re-en. Sec. 2215.9, R.C.M. 1935; amd. Sec. 1, Ch. 63, L. 1937; R.C.M. 1947, 84-4170.

Part 4
Quiet Title

15-18-401 through 15-18-404. Repealed. Sec. 59, Ch. 587, L. 1987.

Compiler's Comments

Histories of Repealed Sections:

15-18-401. En. Sec. 131, p. 115, L. 1891; re-en. Sec. 3898, Pol. C. 1895; re-en. Sec. 2654, Rev. C. 1907; amd. Sec. 1, Ch. 50, L. 1909; re-en. Sec. 2214, R.C.M. 1921; Cal. Pol. C. Sec. 3787; amd. Sec. 1, Ch. 85, L. 1927; re-en. Sec. 2214, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1947; R.C.M. 1947, 84-4158(part).

15-18-402. En. Sec. 131, p. 115, L. 1891; re-en. Sec. 3898, Pol. C. 1895; re-en. Sec. 2654, Rev. C. 1907; amd. Sec. 1, Ch. 50, L. 1909; re-en. Sec. 2214, R.C.M. 1921; Cal. Pol. C. Sec. 3787; amd. Sec. 1, Ch. 85, L. 1927; re-en. Sec. 2214, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1947; R.C.M. 1947, 84-4158(part).

15-18-403. En. Sec. 132, p. 115, L. 1891; re-en. Sec. 3899, Pol. C. 1895; re-en. Sec. 2655, Rev. C. 1907; re-en. Sec. 2215, R.C.M. 1921; Cal. Pol. C. Sec. 3788; amd. Sec. 2, Ch. 85, L. 1927; re-en. Sec. 2215, R.C.M. 1935; R.C.M. 1947, 84-4161.

15-18-404. En. Sec. 4, Ch. 65, L. 1933; re-en. Sec. 2208.4, R.C.M. 1935; R.C.M. 1947, 84-4142.

15-18-405 through 15-18-410 reserved.

15-18-411. Action to quiet title to tax deed — notice. (1) (a) In an action brought to set aside or annul any tax deed or to determine the rights of a purchaser to real property claimed to have been acquired through tax proceedings or a tax sale, the purchaser, upon filing an affidavit, may obtain from the court an order directed to the person claiming to:

(i) own the property;

(ii) have any interest in or lien upon the property;

(iii) have a right to redeem the property; or

(iv) have rights hostile to the tax title.

(b) The person described in subsections (1)(a)(i) through (1)(a)(iv) is referred to as the true owner.

(c) Except as provided in subsection (1)(d), the order described in subsection (1)(a) may command the true owner to:

(i) deposit with the court for the use of the purchaser:

(A) the amount of all taxes, interest, penalties, and costs that would have accrued if the property had been regularly and legally assessed and taxed as the property of the true owner and was about to be redeemed by the true owner; and

(B) the amount of all sums reasonably paid by the purchaser following the order and after 3 years from the date of the tax sale to preserve the property or to make improvements thereon while in the purchaser's possession, as the total amount of the taxes, interest, penalties, costs, and improvements is alleged by the plaintiff and as must appear in the order; or

(ii) show cause on a date to be fixed in the order, not exceeding 30 days from the date of the order, why such payment should not be made.

(d) The deposit provided for in subsection (1)(c) may not be required of a person found by the court to be indigent following an examination into the matter by the court upon the request of a true owner claiming to be indigent.

(2) The affidavit must list the name and address of the true owner and whether he is in the state of Montana, if known to the plaintiff, or state that the address of the true owner is not known to the plaintiff.

(3) (a) The order must be filed with the county clerk and a copy served personally upon each person shown in the affidavit claiming to be a true owner and who is, at that time, known to be in the state of Montana.

(b) Jurisdiction is acquired over all other persons by:

(i) publishing the order once in the official newspaper of the county;

(ii) posting the order in three public places in the county at least 10 days prior to the hearing; and

(iii) giving a copy to the county treasurer.

History: En. Sec. 24, Ch. 587, L. 1987; amd. Sec. 1, Ch. 104, L. 1991.

Cross-References

Costs allowed in actions involving title of real estate, 25-10-101, 25-10-102.

15-18-412. Procedure in tax deed quiet title action. (1) Upon the hearing of the order to show cause, the court has jurisdiction to determine the amount to be deposited and to make an order that the same be paid to the court within a period not exceeding 30 days after the order is made.

(2) (a) Except as provided in subsections (2)(b) and (2)(c), if the amount is not paid within the time fixed by the court, the true owner is considered to have waived any defects in the tax proceedings and any right of redemption. In the event of waiver, the true owner has no claim of any kind against the state or purchaser and a decree must be entered in the action quieting the title of the purchaser as against the true owner.

(b) The proceedings are void if the taxes were not delinquent or have been paid.

(c) A deposit is not required if the true owner is found by the court to be indigent following an examination into the matter by the court upon the request of a true owner claiming to be indigent.

(3) If payment is made to the court and the true owner is successful in the action and the tax proceedings are declared void, the amount deposited with the court must be paid to the purchaser.

(4) If the purported true owner is not successful in the action and the title of the purchaser is sustained, the money must be returned to the purported true owner.

(5) In any action brought by a purchaser to quiet title, several tracts of land, whether contiguous or noncontiguous or owned by different defendants, may be set forth in one complaint. All persons claiming any title to, interest in, or lien upon any of the premises or any part of the premises may be joined as defendants, even though their claims are independent, are not in common, and do not cover the same tracts. The procedure in the action must follow, as nearly as practicable, the procedure specified in 70-28-101 through 70-28-109.

(6) In the final judgment, the court shall also determine the rights resulting from any additional taxes on the property accruing or being paid by either party during the pendency of the suit.

(7) In the quiet title action, the court has complete jurisdiction to fix the amount of taxes that should have been paid, including penalties, interest, and costs, and to determine all questions necessary in granting full relief, including the power to order the department or any tax officer to make and certify to the court a corrected or new assessment or to do any other act necessary to enable the court to do complete justice. Errors may be reviewed on appeal from the final judgment.

History: En. Sec. 25, Ch. 587, L. 1987; amd. Sec. 2, Ch. 104, L. 1991; amd. Sec. 93, Ch. 27, Sp. L. November 1993.

15-18-413. Title conveyed by deed — defects. (1) All deeds executed more than 3 years after the applicable tax sale convey to the grantee absolute title to the property described in the deed as of 3 years following the date of sale of the property interest at the tax sale.

(2) The conveyance includes:

(a) all right, title, interest, estate, lien, claim, and demand of the state of Montana and of the county in and to the property; and

(b) the right, if the tax deed, tax sale, or any of the tax proceedings upon which the deed may be based are attacked and held irregular or void, to recover the unpaid taxes, interest, penalties, and costs that would accrue if the tax proceedings had been regular and it was desired to redeem the property.

(3) The tax deed is free of all encumbrances except as provided in 15-18-214(1)(a) through (1)(c).

(4) A tax deed is prima facie evidence of the right of possession accruing as of the date of the expiration of the redemption period described in 15-18-111.

(5) (a) Subject to subsection (5)(b), if any tax deed or deed purporting to be a tax deed is issued more than 3 years and 30 days after the date of the sale of the property interest at the applicable tax sale, the grantee may publish in the official newspaper of the county, once a week for 2 consecutive weeks, a notice entitled "Notice of Claim of a Tax Title". The notice must:

(i) describe all property claimed to have been acquired by a tax deed;

(ii) contain an estimate of the amount due on the property for delinquent taxes, interest, penalties, and costs;

(iii) contain a statement that for further specific information, reference must be made to the records in the office of the county treasurer;

(iv) list the name and address of record of the person in whose name the property was assessed or taxed; and

(v) contain a statement that demand is made that the true owner shall, within 30 days after the later of service or the first publication of the notice, pay to the county treasurer for use by the claimant the amount of taxes, interest, penalties, and costs as the same appear in the records of the county treasurer to redeem the property or the true owner may bring a suit to quiet the true owner's title or to set aside the tax deed.

(b) The notice described in subsection (5)(a) must be served on a taxpayer whose name and address are reasonably ascertainable.

(6) (a) Provided that the statutory requirements for a notice of intended issuance of a tax deed required by 15-18-212 have been complied with and if within the 30-day period the taxes, interest, penalties, and costs are not paid or a quiet title action is not brought, all defects in the tax proceedings and any right of redemption are considered waived. Except as provided in

subsection (6)(b), after the 30-day period, the title to the property described in the notice and in the tax deed is valid and binding, irrespective of any irregularities, defects, or omissions in any of the provisions of the laws of Montana regarding the assessment, levying of taxes, or sale of property for taxes, whether or not the irregularities, defects, or omissions could void the proceedings.

(b) The proceedings in subsection (6)(a) are void if the taxes were not delinquent or have been paid.

History: En. Sec. 26, Ch. 587, L. 1987; amd. Sec. 1, Ch. 407, L. 1997.

CHAPTERS 19 THROUGH 22

RESERVED

CHAPTER 23

CENTRALLY ASSESSED PROPERTY

Part 1 — General Provisions

15-23-101. Properties centrally assessed.
15-23-102. Independent appraisal option.
15-23-103. Due date of reports and returns — extensions.
15-23-104. Failure to file — estimate by department — penalty.
15-23-105. Apportionment among counties.
15-23-106. Report to the counties.
15-23-107. Amended assessment.
15-23-108. Rulemaking authority.
15-23-109 and 15-23-110 reserved.
15-23-111. Centrally administered tax-exempt property.
15-23-112 through 15-23-114 reserved.
15-23-115. Interest.
15-23-116. Statute of limitations.

Part 2 — Railroads

15-23-201. Renumbered 15-23-204.
15-23-202. Renumbered 15-23-205.
15-23-203. Definitions relating to taxes.
15-23-204. Assessment of railroads.
15-23-205. Assessment — how made.
15-23-206 through 15-23-210 reserved.
15-23-211. Definitions.
15-23-212. Annual report.
15-23-213. Assessment — allocation — taxable value.
15-23-214. Determination of tax — payment.
15-23-215. Deposit of taxes.
15-23-216. Lien — collection actions.

Part 3 — Public Utilities

15-23-301. Officers of certain public utility companies to furnish statement to department.
15-23-302. Repealed.
15-23-303. Assessment of property — apportionment to counties.

Part 4 — Airlines

15-23-401. Definitions.
15-23-402. Report by airline company.
15-23-403. Determination of value — exception for new aircraft and supporting equipment — notice.

Part 5 — Mines Net Proceeds

15-23-501. Taxation of mines.
15-23-502. Net proceeds tax — statement of yield.
15-23-503. Net proceeds — how computed.

15-23-504. Lien of tax and penalty.
15-23-505. Assessment of royalties.
15-23-506. False or fraudulent reports.
15-23-507. Taxation and payment on royalty interests.
15-23-508. Lien of tax — enforcement of payment.
15-23-509. Repealed.
15-23-510 through 15-23-514 reserved.
15-23-515. Net proceeds for talc — statement — value.
15-23-516. Net proceeds for vermiculite — statement — value.
15-23-517. Net proceeds for limestone — statement — value.
15-23-518. Net proceeds for industrial garnets and byproducts — statement — value — exemption.
15-23-519 and 15-23-520 reserved.
15-23-521. Examination of records by department.
15-23-522. Surface ground and improvements not exempt.
15-23-523. Dissolved corporations to make returns on net proceeds of mines and pay tax accrued.

Part 6 — Oil and Gas Net Proceeds (Repealed)

15-23-601. Repealed.
15-23-602. Repealed.
15-23-603. Repealed.
15-23-604. Repealed.
15-23-605 through 15-23-614. Repealed.
15-23-615. Repealed.
15-23-616. Repealed.
15-23-617 through 15-23-620 reserved.
15-23-621. Repealed.
15-23-622 through 15-23-630 reserved.
15-23-631. Repealed.

Part 7 — Coal Gross Proceeds

15-23-701. Reporting gross yield from coal.
15-23-702. Entry of gross proceeds in property tax record.
15-23-703. Taxation of gross proceeds — taxable value for county classification and guaranteed tax base aid to schools.
15-23-704. Lien of tax — enforcement of payment.
15-23-705. Department to calculate unit value.
15-23-706. Department to determine redistribution of coal gross proceeds to taxing jurisdictions.
15-23-707. Coal gross proceeds redistribution account.
15-23-708 through 15-23-715 reserved.
15-23-716. Terminated.

Part 8 — Metal Mines Gross Proceeds

15-23-801. Definitions.
15-23-802. Metal mines — ad valorem taxation — reports and sampling.
15-23-803. Valuation — gross proceeds.
15-23-804. Taxation of merchantable value.
15-23-805. Imputed value — procedure for metals.
15-23-806. Lien of tax.
15-23-807. Assessment procedures.

Chapter Cross-References

Property tax administration, Art. VIII, sec. 3, Mont. Const.
Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

Part 1
General Provisions

Part Cross-References

Metal mines gross proceeds to be assessed under this part, 15-23-807.

15-23-101. Properties centrally assessed. The department shall centrally assess each year:

(1) the railroad transportation property of railroads and railroad car companies operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including but not limited to telegraph, telephone, microwave, and electric power or transmission lines; natural gas or oil pipelines; canals, ditches, flumes, or like properties and including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives;

(3) all property of scheduled airlines;

(4) the net proceeds of mines;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) that is subject to the provisions of Title 15, chapter 24, part 12.

History: En. 84-7801 by Sec. 1, Ch. 98, L. 1977; R.C.M. 1947, 84-7801; amd. Sec. 4, Ch. 686, L. 1979; amd. Sec. 3, Ch. 478, L. 1981; amd. Sec. 4, Ch. 683, L. 1983; amd. Sec. 2, Ch. 10, Sp. L. July 1992; amd. Sec. 61, Ch. 42, L. 1997; amd. Sec. 2, Ch. 531, L. 1999; amd. Sec. 8, Ch. 583, L. 1999; amd. Sec. 18, Ch. 7, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 7 in (2) near end substituted "electrical energy" for "electric energy"; and made minor changes in style. Amendment effective October 1, 2001.

15-23-102. Independent appraisal option. (1) The department of revenue may have property subject to the provisions of this chapter assessed by a qualified independent appraiser when both the department and the owner of the property subject to the assessment agree in writing:

(a) on a particular independent appraiser to do an appraisal;

(b) to share the costs of the independent appraisal; and

(c) to accept the results of the appraisal.

(2) Appeals from the decision of the department pursuant to 15-1-211 may be taken to the state tax appeal board.

History: En. 84-7802 by Sec. 2, Ch. 98, L. 1977; R.C.M. 1947, 84-7802; (1)En. Sec. 1, Ch. 253, L. 1983; amd. Sec. 15, Ch. 526, L. 1983; amd. Sec. 3, Ch. 36, L. 1999.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
State Tax Appeal Board, Title 15, ch. 2.

15-23-103. Due date of reports and returns — extensions. (1) Except as provided in subsection (2), each report or return described in 15-23-301, 15-23-402, 15-23-502, 15-23-701, or 15-23-517 must be delivered to the department on or before March 31 each year.

(2) Each report or return for a natural gas or oil pipeline described in 15-23-301 must be delivered to the department on or before April 15 each year.

(3) Each report described in 15-23-204, 15-23-212, 15-23-515, 15-23-516, or 15-23-518 must be delivered to the department before April 15 each year.

(4) The department may for good cause extend the time for filing a return or report for not more than 30 days.

History: En. 84-7803 by Sec. 3, Ch. 98, L. 1977; amd. Sec. 2, Ch. 494, L. 1977; R.C.M. 1947, 84-7803; amd. Sec. 1, Ch. 606, L. 1983; amd. Sec. 5, Ch. 531, L. 1989; amd. Sec. 5, Ch. 695, L. 1991; amd. Sec. 3, Ch. 10, Sp. L. July 1992; amd. Sec. 5, Ch. 506, L. 1993; amd. Sec. 5, Ch. 397, L. 1995; amd. Sec. 30, Ch. 451, L. 1995.

15-23-104. Failure to file — estimate by department — penalty. (1) If any person fails to file a report or return within the time established in 15-23-103 or by a later date approved by the department, the department shall estimate the value of the property that should have been reported on the basis of the best available information. In estimating the value of the net proceeds of mines, the department shall proceed under 15-23-506, and in estimating the value of the gross proceeds of coal mines, the department shall proceed under 15-35-107. In estimating the value of all other property subject to assessment under parts 2 through 4 of this chapter, the department shall proceed under 15-1-303. In estimating value under this section, the department may subpoena a person or the person's agent as specified in 15-1-302. An assessment pursuant to parts 5, 7, and 8 of this chapter based on estimated value or imputed value is subject to review under 15-1-211. For each month or part of a month that a report is delinquent, the department shall impose and collect a $25 penalty, with the total not to exceed $200, and shall deposit the penalty to the credit of the general fund. The department shall assess a penalty of 1% of the tax due for each month or part of a month that the report is delinquent. The department shall notify the county treasurer of each affected county of the amount of the penalty, and the treasurer shall collect the penalty in the same manner as the taxes to which the penalty applies.

(2) For a delinquency in reporting under 15-23-212, the department shall assess a penalty of 1% of the tax due for each month or part of a month that the report is delinquent.

History: En. 84-7804 by Sec. 4, Ch. 98, L. 1977; R.C.M. 1947, 84-7804; amd. Sec. 2, Ch. 606, L. 1983; amd. Sec. 3, Ch. 357, L. 1985; amd. Sec. 6, Ch. 811, L. 1991; amd. Sec. 4, Ch. 10, Sp. L. July 1992; amd. Sec. 94, Ch. 27, Sp. L. November 1993; amd. Sec. 31, Ch. 451, L. 1995.

15-23-105. Apportionment among counties. The department shall apportion the value of property assessed under 15-23-101, 15-23-205, or 15-23-403, other than railroad car company property, among the counties in which such property is located. Apportionment shall be on a mileage basis or on the basis of the original installed cost of the centrally assessed property located in the respective counties. If the property is of such a character that its value cannot reasonably be apportioned on the basis of mileage or on the basis of the original installed cost of the centrally assessed property located in the respective counties, the department may adopt such other method or basis of apportionment as may be just or proper.

History: En. 84-7805 by Sec. 5, Ch. 98, L. 1977; R.C.M. 1947, 84-7805; amd. Sec. 5, Ch. 686, L. 1979; amd. Sec. 5, Ch. 10, Sp. L. July 1992.

15-23-106. Report to the counties. (1) On or before July 1, the department shall prepare for each county a statement listing:

(a) the assessed value of railroad property, as determined under 15-23-205, apportioned to the county, including the length or other description of the property;

(b) the assessed value of utility property, as determined under 15-23-303, apportioned to the county, including the length or other description of the property;

(c) the assessed value of property of airline companies, as determined under 15-23-403, apportioned to the county; 90% of the value of the property of airline companies apportioned to any county by reason of a state airport being located in the county must be stated separately from the remaining assessed value of the property of airline companies apportioned to the county;

(d) the assessed value of the net proceeds and royalties from mines in the county, as determined under 15-23-503, 15-23-505, and 15-23-515 through 15-23-518; and

(e) the assessed value of the gross proceeds from coal mines, as described in 15-23-701.

(2) The department shall enter the reported assessed values in the property tax record for the county.

History: En. 84-7806 by Sec. 6, Ch. 98, L. 1977; R.C.M. 1947, 84-7806; amd. Sec. 1, Ch. 238, L. 1981; amd. Sec. 6, Ch. 20, L. 1985; amd. Sec. 6, Ch. 531, L. 1989; amd. Sec. 6, Ch. 695, L. 1991; amd. Sec. 6, Ch. 506, L. 1993; amd. Sec. 95, Ch. 27, Sp. L. November 1993; amd. Sec. 6, Ch. 397, L. 1995; amd. Sec. 32, Ch. 451, L. 1995.

Cross-References

Transmittal of airline property tax — state airports, 67-1-303.

15-23-107. Amended assessment. Whenever the valuation of centrally assessed property is revised under 15-8-601 or 15-23-102, the department shall, within 15 days following the final decision or order, enter the revision in the property tax record for each applicable county.

History: En. 84-7807 by Sec. 7, Ch. 98, L. 1977; R.C.M. 1947, 84-7807; amd. Sec. 96, Ch. 27, Sp. L. November 1993; amd. Sec. 4, Ch. 36, L. 1999.

15-23-108. Rulemaking authority. The department of revenue may adopt rules necessary for the taxation of property under this chapter.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(2).

15-23-109 and 15-23-110 reserved.

15-23-111. Centrally administered tax-exempt property. The possession or beneficial use of tax-exempt property that exists in more than one county or more than one state must be administered under the provisions of this chapter.

History: En. Sec. 2, Ch. 683, L. 1983.

Cross-References

State and other exempt property, Title 15, ch. 24, part 12.

15-23-112 through 15-23-114 reserved.

15-23-115. Interest. If the department determines that a taxpayer has incorrectly reported a value under 15-23-502, 15-23-515, 15-23-516, 15-23-517, 15-23-518, 15-23-701, or 15-23-802 and if an additional tax is due, there must be added to the tax until paid in full interest at the rate of 1% a month or fraction of a month from the date the original tax was due and payable. A taxpayer subject to imposition of interest pursuant to this section is not subject to the penalty and interest provisions contained in 15-16-102.

History: En. Sec. 1, Ch. 112, L. 1983; amd. Sec. 7, Ch. 531, L. 1989; amd. Sec. 7, Ch. 695, L. 1991; amd. Sec. 7, Ch. 506, L. 1993; amd. Sec. 97, Ch. 27, Sp. L. November 1993; amd. Sec. 7, Ch. 397, L. 1995; amd. Sec. 33, Ch. 451, L. 1995.

15-23-116. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

Part 2
Railroads

Part Cross-References

Taxable percentage of property of centrally assessed companies, 15-6-141.
Tax on companies regulated by Public Service Commission to fund Consumer Counsel, 69-1-223.
Consolidated railroads subject to taxation, 69-14-512.
Leased or purchased railroads subject to taxation, 69-14-513.
Railroads extending lines into state subject to taxation, 69-14-536.

15-23-201. Renumbered 15-23-204. Sec. 5(2)(a), Ch. 531, L. 1999.

15-23-202. Renumbered 15-23-205. Sec. 5(2)(b), Ch. 531, L. 1999.

15-23-203. Definitions relating to taxes. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) (a) “Base value” means, except as provided in subsection (1)(b), the system value of railroad transportation property of a railroad in the preceding tax year.

(b) For tax year 1999, base value means the system value of railroad transportation property used to determine the railroad’s Montana property taxes paid for the 1998 tax year.

(2) "Capitalization rate" means the capitalization rate reported by the surface transportation board, provided for in 49 U.S.C. 701, in its annual cost of capital report.

(3) "Change in earnings" means the value determined by dividing the average earnings for the 5 years immediately preceding the current tax year by the average earnings for the 5 years immediately preceding the previous tax year.

(4) "Change in the capitalization rate" means the value derived by dividing the current year capitalization rate by the preceding year capitalization rate.

(5) "Earnings" means income realized before deducting depreciation, interest expenses, lease expenses, and taxes.

(6) "Gross profit margin" means the ratio of earnings to operating revenue.

(7) "Leased property" means property that is subject to an agreement that transfers the use of the property to the lessee during the term of the lease and that is not capitalized on the lessee's balance sheet.

(8) "Operating revenue" means the amount of money that the railroad is entitled to receive or that accrues to its benefit from services rendered in transporting property or persons by rail.

(9) "System cost" means the total depreciated cost of all railroad transportation property, including leased property within the state and outside the state.

History: En. Sec. 3, Ch. 531, L. 1999.

15-23-204. Assessment of railroads. The president, secretary, or managing agent or such other officer as the department of revenue may designate of any corporation and each person or association of persons owning or operating any railroad in more than one county in this state or more than one state must on or before April 15 each year furnish the department a statement signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending December 31 immediately preceding:

(1) the whole number of miles of railroad in the state and, where the line is partly out of the state, the whole number of miles without the state and the whole number within the state, owned or operated by such corporation, person, or association;

(2) the value of the roadway, roadbed, and rails of the whole railroad and the value of the same within the state;

(3) the width of the right-of-way;

(4) the number of each kind of all rolling stock used by such corporation, person, or association in operating the entire railroad, including the part without the state;

(5) the number, kind, and value of rolling stock owned and operated in the state;

(6) the number, kind, and value of rolling stock used in the state but not owned by the party making the returns;

(7) the number, kind, and value of rolling stock owned but used out of the state, either upon divisions of road operated by the party making the returns or by and upon other railroads;

(8) the whole number of sidetracks in each county, including the number of miles of track in each railroad yard in the state;

(9) the number of each kind of rolling stock used in operating the entire railroad, including the part without the state, which must include a detailed statement of the number and value thereof of all engines; passenger, mail, express, baggage, freight, and other cars; or property owned or leased by such corporation, person, or association;

(10) the number of sleeping and dining cars not owned by such corporation, person, or association but used in operating the railroads of such corporation, person, or association in the state or on the line of the road without the state during each month of the year for which the return is made; also the number of miles each month the cars have been run or operated within and without the state;

(11) a description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road has once been given, no other annual description thereof is necessary unless the road has been changed. Whenever the road or any portion of the road is advertised to be sold or is sold for taxes, either state or county, no other description is necessary than that given by, and the same

is conclusive upon, the person, corporation, or association giving the description. No assessment is invalid on account of a misdescription of the railroad or the right-of-way for the same. If such statement is not furnished as above provided, the assessment made by the department upon the property of the corporation, person, or association failing to furnish the statement is conclusive and final.

(12) the gross earnings of the entire road;

(13) the gross earnings of the road within the state and, if the railroad is let to other operators, how much was derived by the lessor as rental;

(14) the cost of operating the entire road, exclusive of sinking fund, expenses of land department, and money paid to the United States;

(15) net income for such year and amount of dividend declared;

(16) capital stock authorized;

(17) capital stock paid in;

(18) funded debt;

(19) number of shares authorized;

(20) number of shares of stock issued;

(21) number, kind, and total number of miles traveled within the state by railroad cars owned by railroad car companies; and

(22) any other facts the department may require.

History: En. Sec. 1675, 5th Div. Comp. Stat. 1887; amd. Sec. 43, p. 87, L. 1891; re-en. Sec. 3737, Pol. C. 1895; re-en. Sec. 2556, Rev. C. 1907; re-en. Sec. 2131, R.C.M. 1921; Cal. Pol. C. Sec. 3664; amd. Sec. 1, Ch. 7, L. 1925; re-en. Sec. 2131, R.C.M. 1935; amd. Sec. 23, Ch. 516, L. 1973; amd. Sec. 10, Ch. 98, L. 1977; amd. Sec. 1, Ch. 494, L. 1977; R.C.M. 1947, 84-801; amd. Sec. 6, Ch. 10, Sp. L. July 1992; Sec. 15-23-201, MCA 1997; redes. 15-23-204 by Sec. 5(2)(a), Ch. 531, L. 1999.

Cross-References

Where railroad property assessed, 15-8-407.
Due date of report, 15-23-103.

15-23-205. Assessment — how made. (1) The department shall assess the railroad transportation property of all railroads operated in more than one county or more than one state as provided in this section. Assessment must be made to the person owning or leasing or using the property and must be made upon the entire railroad within the state.

(2) The department shall determine the value of the railroad system for the current year by multiplying the base value of the railroad by the value change factor determined under subsection (3).

(3) (a) The value change factor is the sum of the income change factor, weighted by 50%, the gross profit margin change factor, weighted by 25%, and the property change factor, weighted by 25%.

(b) The income change factor is determined by dividing the change in earnings by the change in the capitalization rate.

(c) The gross profit margin change factor is determined by dividing the average gross profit margin for the 2 years immediately preceding the current tax year by the average gross profit margin for the 2 years immediately preceding the previous tax year.

(d) The property change factor is determined by dividing the system cost reported by the railroad for the tax year immediately preceding the current tax year by the system cost reported by the railroad for the tax year immediately preceding the previous tax year.

(4) The department shall apportion the system value of the railroad to Montana by multiplying the system value of the railroad determined under subsection (2) by the average of the allocation factor for the 2 years immediately preceding the current tax year. The allocation factor is determined under subsection (5).

(5) The allocation factor used to apportion the system value of the railroad to Montana is the average of the sum of:

(a) the ratio of track miles in the state to total system track miles;

(b) the ratio of revenue ton miles in the state to total system revenue ton miles;

(c) the ratio of gross investment in road and equipment in the state to total system gross investment in road and equipment;

(d) the ratio of operating revenue reported in the state to total system operating revenue; and

(e) the ratio of railroad car and locomotive miles in the state to total system railroad car and locomotive miles.

(6) The department shall take into account extenuating circumstances to adjust the assessed value of railroad property in the state. Occurrences that may result in an adjustment to the assessed value of railroad property include but are not limited to:

(a) extraordinary, unusual, or infrequent events that are material in nature and of a character different from the typical or customary business operations, that are not expected to recur frequently, and that are not normally considered in the evaluation of the operating results of a business; and

(b) material increases or decreases in income and property as a result of events such as writeoffs, writedowns, and changes in accounting methods or practices.

(7) In determining the taxable value of railroad property, the department shall determine the percentage rate "R" provided for in 15-6-145 in order to achieve compliance with the requirements of the federal Railroad Revitalization and Regulatory Reform Act of 1976, as amended.

History: En. Sec. 1675, 5th Div. Comp. Stat. 1887; amd. Sec. 44, p. 89, L. 1891; re-en. Sec. 3738, Pol. C. 1895; re-en. Sec. 2557, Rev. C. 1907; re-en. Sec. 2132, R.C.M. 1921; Cal. Pol. C. Sec. 3665; re-en. Sec. 2132, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1939; amd. Sec. 62(a), Ch. 405, L. 1973; amd. Sec. 11, Ch. 98, L. 1977; R.C.M. 1947, 84-802; amd. Sec. 6, Ch. 686, L. 1979; amd. Sec. 2, Ch. 367, L. 1981; amd. Sec. 8, Ch. 743, L. 1985; amd. Sec. 4, Ch. 531, L. 1999; Sec. 15-23-202, MCA 1997; redes. 15-23-205 by Sec. 5(2)(b), Ch. 531, L. 1999; amd. Sec. 9, Ch. 583, L. 1999.

Cross-References

Department to apportion value among counties, 15-23-105.
Value to be transmitted to counties, 15-23-106.

15-23-206 through 15-23-210 reserved.

15-23-211. *(Temporary)* **Definitions.** As used in 15-23-211 through 15-23-216, unless the context requires otherwise, the following definitions apply:

(1) "Average levy" means 95% of the average statewide mill levy for commercial and industrial property.

(2) "Person" includes an individual, firm, association, company, partnership, corporation, joint-stock company, agency, syndicate, or cooperative.

(3) "Private railroad cars" means all railroad cars that:

(a) are not owned by a railroad company operating in this state;

(b) are used for transporting persons or freight; and

(c) are not otherwise assessed for property taxation in this state.

(4) "Railroad car company" means any person, other than a railroad company, engaged in operating, leasing, or furnishing private railroad cars, whether or not owned by that person, for the transportation of persons or freight over railroad lines located wholly or partially within this state. *(Terminates December 31, 2002—sec. 3, Ch. 16, L. 1997.)*

15-23-211. *(Effective January 1, 2003)* **Definitions.** As used in 15-23-211 through 15-23-216, unless the context requires otherwise, the following definitions apply:

(1) "Average levy" means the average statewide rate of taxation on commercial and industrial property.

(2) "Person" includes an individual, firm, association, company, partnership, corporation, joint-stock company, agency, syndicate, or cooperative.

(3) "Private railroad cars" means all railroad cars that:

(a) are not owned by a railroad company operating in this state;

(b) are used for transporting persons or freight; and

(c) are not otherwise assessed for property taxation in this state.

(4) "Railroad car company" means any person, other than a railroad company, engaged in operating, leasing, or furnishing private railroad cars, whether or not owned by that person, for the transportation of persons or freight over railroad lines located wholly or partially within this state.

History: En. Sec. 7, Ch. 10, Sp. L. July 1992; amd. Sec. 1, Ch. 532, L. 1993; amd. Sec. 1, Ch. 16, L. 1997.

15-23-212. Annual report. Each railroad car company shall, annually and within the time requirements of 15-23-103(3) and (4), file with the department of revenue a report, signed and sworn to by one of its designated officers, that provides the following information as of the preceding December 31:

(1) the name and nature of the business of the company;

(2) the number, kind, acquisition cost, date of acquisition, and name of owner of its private railroad cars;

(3) the cost of additions and betterment, special equipment, racks, protective equipment, or any other modification or improvement to a car since acquisition;

(4) the total car miles traveled, loaded and unloaded, within the state during the calendar year preceding the date of filing;

(5) the total car miles traveled, loaded and unloaded, within and outside of the state during the calendar year preceding the date of filing;

(6) the average number of miles traveled by each class of car during the year;

(7) the description and location of real and personal property that is owned by the railroad car company and that is subject to taxation within this state; and

(8) any other facts the department may require.

History: En. Sec. 8, Ch. 10, Sp. L. July 1992.

15-23-213. Assessment — allocation — taxable value. (1) The department of revenue shall assess the property in the name of the railroad car company owning the property unless the property is reported by another person leasing or operating the property.

(2) The allocation of property to this state must be made on the basis of the car miles traveled within the state to the total car miles traveled unless the department by administrative rule adopts a different formula.

(3) In determining taxable value, the department shall use the percentage rate "R", as provided in 15-6-145, to achieve compliance with the requirements of the federal Railroad Revitalization and Regulatory Reform Act of 1976, as amended.

History: En. Sec. 9, Ch. 10, Sp. L. July 1992.

15-23-214. Determination of tax — payment. (1) Subject to 15-10-420 and on or before the third Monday in October, the department of revenue shall compute the tax on railroad car company property by multiplying the taxable value of the property by the average levy.

(2) After determining the tax, the department shall send to the last-known address of each railroad car company subject to taxation a written notice, postage prepaid, showing the amount of taxes due for the current year and any delinquent amount for prior years. The notice must include the taxable value of the property and the average levy used to compute the tax.

(3) The tax is due and payable to the department under the provisions of 15-16-102. A tax not received by the department within the time requirements of 15-16-102 is delinquent and subject to penalty and interest under that section.

History: En. Sec. 10, Ch. 10, Sp. L. July 1992; amd. Sec. 96, Ch. 584, L. 1999.

15-23-215. Deposit of taxes. All taxes, penalties, and interest collected by the department of revenue under 15-23-211 through 15-23-216 must be deposited in the general fund.

History: En. Sec. 11, Ch. 10, Sp. L. July 1992.

15-23-216. Lien — collection actions. (1) A tax due under 15-23-211 through 15-23-216 is a lien on all real and personal property of the railroad car company to the same extent as are other taxes under 15-16-401 and 15-16-402.

(2) The department may at any time after the taxes are delinquent use the following collection actions:

(a) seizure and sale of personal property, as provided in 15-17-911, with the department having the same authority as the county treasurer;

(b) suit for collection in district court; or

(c) issuance of a warrant for distraint, as provided in Title 15, chapter 1, part 7.

(3) The use of one collection method does not prevent the department from using other collection methods.

History: En. Sec. 12, Ch. 10, Sp. L. July 1992.

Part 3
Public Utilities

Part Cross-References

Taxable percentage of public utility property, 15-6-135, 15-6-137, 15-6-141.

Tax on companies regulated by Public Service Commission to fund Consumer Counsel, 69-1-223.

15-23-301. Officers of certain public utility companies to furnish statement to department. The president, secretary, or managing agent or such other officer as the department of revenue may designate of any corporation and each person or association of persons owning or operating a telegraph, telephone, microwave, electric power, or transmission line, natural gas pipeline, oil pipeline, canal, ditch, flume, or other property, other than real estate not included in right-of-way, and which constitute a single and continuous property throughout more than one county or state, must each year furnish the department a statement, signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending on December 31 immediately preceding as follows:

(1) the whole number of miles of said property in the state and, where the property is partly out of the state, the whole number of miles without the state and the whole number of miles within the state owned or operated by such corporation, person, or association;

(2) the total value of the entire property and plant, both within and without the state, and the total value of that portion of the same within the state;

(3) a complete description of the property within the state, giving the points of entrance into and the points of exit from the state and the points of entrance into and the points of exit from each county, with a statement of the total number of miles in each county in the state;

(4) such other information regarding such property as may be required by the department.

History: En. Sec. 1, Ch. 49, L. 1919; re-en. Sec. 2138, R.C.M. 1921; re-en. Sec. 2138, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1939; amd. Sec. 25, Ch. 516, L. 1973; amd. Sec. 1, Ch. 50, L. 1974; amd. Sec. 1, Ch. 210, L. 1975; amd. Sec. 12, Ch. 98, L. 1977; R.C.M. 1947, 84-901.

Cross-References

When public utility property assessed, 15-8-406.

Due date of report, 15-23-103.

15-23-302. Repealed. Sec. 11, Ch. 686, L. 1979.

History: En. Sec. 2, Ch. 49, L. 1919; re-en. Sec. 2139, R.C.M. 1921; re-en. Sec. 2139, R.C.M. 1935; amd. Sec. 2, Ch. 17, L. 1939; amd. Sec. 64, Ch. 405, L. 1973; amd. Sec. 2, Ch. 210, L. 1975; R.C.M. 1947, 84-902.

15-23-303. Assessment of property — apportionment to counties. The department shall assess all property described in 15-23-301, but franchises may not be assessed. The value of property for assessment purposes must be determined upon factors that the department considers proper.

History: En. Sec. 6, Ch. 49, L. 1919; re-en. Sec. 2143, R.C.M. 1921; re-en. Sec. 2143, R.C.M. 1935; amd. Sec. 4, Ch. 17, L. 1939; amd. Sec. 27, Ch. 516, L. 1973; amd. Sec. 13, Ch. 98, L. 1977; R.C.M. 1947, 84-905; amd. Sec. 10, Ch. 583, L. 1999.

Part 4
Airlines

15-23-401. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Air commerce" means the transportation by aircraft of persons or property for hire in interstate, intrastate, or international transportation on regularly scheduled flights.

(2) "Aircraft" means a conveyance used or designed for navigation or flight through the air.

(3) "Equated plane hours" means hours spent by aircraft in flight or on the ground weighted according to the cargo capacity of each aircraft.

(4) "Flight property" means aircraft fully equipped, ready for flight used in air commerce.

(5) "Newly acquired aircraft" means an aircraft acquired and placed into service within the calendar year immediately preceding the current calendar year in which the report that is required by 15-23-402 is filed regardless of whether the aircraft acquired is new or used. Newly

acquired aircraft includes an aircraft acquired and placed in service in calendar year 1997 provided that the aircraft was included in the report and the report was timely filed.

(6) "Newly acquired equipment" means equipment acquired and placed into service within the calendar year immediately preceding the current calendar year in which the report that is required by 15-23-402 is filed regardless of whether the equipment acquired is new or used. Newly acquired equipment includes equipment acquired and placed in service in calendar year 1997 provided that the equipment was included in the report and the report was timely filed.

(7) "Operating" or "operated" means landings or takeoffs during interstate flight.

(8) "Scheduled airline company" means any person who undertakes directly or indirectly to engage in the business of scheduled air commerce.

History: En. Sec. 1, Ch. 249, L. 1955; amd. Sec. 1, Ch. 367, L. 1969; amd. Sec. 22, Ch. 52, L. 1977; R.C.M. 1947, 84-6401; amd. Sec. 1, Ch. 140, L. 1999.

15-23-402. Report by airline company. Every airline company engaged in air commerce in this state shall annually file with the department of revenue in such form as the department may require a report under oath showing the following:

(1) the name of the person or persons, association, joint-stock company, or corporation;

(2) under the laws of what state organized or existing;

(3) the location of its principal office;

(4) the location of its principal office in this state, if any;

(5) the number of aircraft of each type or kind, the total original cost, the average cost per plane, the total depreciated cost, and the average depreciated cost per plane at the end of the preceding calendar year;

(6) the number of shares of capital stock authorized, number of shares outstanding, the total par value and the total market value at the end of the preceding calendar year; the par value of outstanding bonds and long-term debt and the market value at the end of the preceding calendar year;

(7) income account showing operating revenues and expenses of the entire system and net operating income during the preceding calendar year;

(8) the total tonnage of passengers, express, and freight first received by the airline company in this state during the preceding calendar year plus the total tonnage of passengers, express, and freight finally discharged by it within this state during the preceding calendar year and the total of such tonnage first received by the airline company or finally discharged by it within and without this state during the preceding calendar year;

(9) the total time in equated plane hours of all aircraft of the scheduled airline company in flight in this state during the preceding calendar year plus the total time of such aircraft on the ground in this state during the preceding calendar year and the total of such time in flight or on the ground within and without this state during the preceding calendar year;

(10) the number of revenue ton-miles of passengers, mail, express, and freight flown by the scheduled airline company within this state during the preceding calendar year and the total number of such miles flown by it within and without this state during the preceding calendar year;

(11) the number of arrivals and departures of all aircraft of the scheduled airline company in this state during the preceding calendar year and the total number of such arrivals and departures within and without this state during the preceding calendar year;

(12) such other information as the department may require.

History: En. Sec. 3, Ch. 249, L. 1955; amd. Sec. 243, Ch. 516, L. 1973; amd. Sec. 21, Ch. 98, L. 1977; R.C.M. 1947, 84-6403.

Cross-References

Due date of report, 15-23-103.

15-23-403. Determination of value — exception for new aircraft and supporting equipment — notice. (1) The department of revenue shall determine the full and true valuation of all property of each airline operating in this state or used by each scheduled airline company in air commerce. Except as provided in subsection (2), this valuation may be ascertained by:

(a) determining the full and true valuation of all property owned and operated by each scheduled airline company; and

(b) allocating to the state of Montana from the total valuation a valuation that represents this state's proper share of the valuation of the property, through the application of the ratios that are described in 15-23-402(8), (9), (10), and (11) against the total valuation.

(2) For a scheduled airline company operating within this state whose allocation of valuation within this state, as determined under subsection (1)(b), is 50% or more, the department shall determine the valuation of a newly acquired aircraft and newly acquired equipment to support that aircraft at 28% of full and true valuation for the first year after acquisition. For each succeeding year, the department shall increase the valuation by 8% over the previous year's valuation until the valuation equals full and true valuation.

(3) After making the assessment as provided in subsection (1) or (2), the department shall give written notice of the assessment to the person or persons to whom the assessment is made.

History: En. Sec. 4, Ch. 249, L. 1955; amd. Sec. 2, Ch. 367, L. 1969; amd. Sec. 244, Ch. 516, L. 1973; amd. Sec. 2, Ch. 328, L. 1975; R.C.M. 1947, 84-6404; amd. Sec. 7, Ch. 686, L. 1979; amd. Sec. 1, Ch. 520, L. 1987; amd. Sec. 2, Ch. 140, L. 1999.

Cross-References

Department to apportion value among counties, 15-23-105.

Value to be transmitted to counties, 15-23-106.

Part 5
Mines Net Proceeds

Part Cross-References

Classification and taxable percentage of mines net proceeds, 15-6-131.

Mining license taxes, Title 15, ch. 37.

15-23-501. Taxation of mines. All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal, or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed as all other land is taxed. All machinery used in mining and all property and surface improvements upon or appurtenant to mines and mining claims which have a value separate and independent of such mines or mining claims and the annual net proceeds of all mines and mining claims shall be taxed as other personal property.

History: En. Sec. 3, p. 73, L. 1891; re-en. Sec. 3672, Pol. C. 1895; re-en. Sec. 2500, Rev. C. 1907; re-en. Sec. 2088, R.C.M. 1921; re-en. Sec. 2088, R.C.M. 1935; R.C.M. 1947, 84-5401; amd. Sec. 18, Ch. 693, L. 1979.

Cross-References

Mines as real estate, 15-1-101.

15-23-502. Net proceeds tax — statement of yield. Every person engaged in mining, extracting, or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or source whatever precious stones or gems, vermiculite, bentonite, or other valuable mineral, except coal and metals, must on or before March 31 each year make out a statement of the gross yield and value of the above-named metals or minerals from each mine owned or worked by the person during the year preceding January 1 of the year in which the statement is made. The statement must be in the form prescribed by the department of revenue and must be verified by the oath of the person completing the statement or the manager, superintendent, agent, president, or vice-president, if a corporation, association, or partnership, and must be delivered to the department on or before March 31. Except as provided in 15-23-515 through 15-23-518, the statement must show the following:

(1) the name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons owning or claiming any royalty interest in the mineral product of the mine or the proceeds derived from the sale of products, and the amount or amounts paid or yielded as royalty to each of the persons during the period covered by the statement;

(2) the description and location of the mine;

(3) the number of tons of ore or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of the ores, mineral products, or deposits and the yield of the ores, mineral products, or deposits from the mine in constituents of commercial value; that is, commercially valuable constituents of the ores, mineral products, or deposits, measured by standard units of measurement, yielded to the person engaged in mining and to each royalty holder, if any, during the period covered by the statement;

(5) the gross yield or value in dollars and cents;

(6) cost of extracting from the mine;

(7) cost of transporting to place of reduction or sale;

(8) cost of reduction or sale;

(9) cost of marketing the product and conversion of the product into money;

(10) cost of construction, repairs, and betterments of mines and cost of repairs and replacements of reduction works;

(11) the assessed valuation of reduction works for the calendar year for which the return is made;

(12) cost of fire insurance, workers' compensation insurance, boiler and machinery insurance, and public liability insurance paid for the mine, reduction works, or beneficiation process;

(13) cost of welfare and retirement fund payments provided for in wage contracts;

(14) cost of testing extracted minerals for the purpose of satisfying federal or state health and safety laws or regulations, the cost of plant security in Montana, the cost of assaying and sampling the extracted minerals, and the costs incurred in Montana for engineering and geological services for existing mining operations but not including any services beyond the stage of reduction and beneficiation of the minerals; and

(15) cost of mine reclamation.

History: En. Sec. 1, Ch. 237, L. 1921; re-en. Sec. 2089, R.C.M. 1921; amd. Sec. 1, Ch. 191, L. 1925; amd. Sec. 1, Ch. 139, L. 1927; amd. Sec. 1, Ch. 161, L. 1933; amd. Sec. 1, Ch. 188, L. 1935; re-en. Sec. 2089, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1947; amd. Sec. 1, Ch. 138, L. 1969; amd. Sec. 195, Ch. 516, L. 1973; amd. Sec. 16, Ch. 525, L. 1975; amd. Sec. 18, Ch. 52, L. 1977; amd. Sec. 14, Ch. 98, L. 1977; amd. Sec. 4, Ch. 498, L. 1977; R.C.M. 1947, 84-5402; amd. Sec. 1, Ch. 528, L. 1983; amd. Sec. 1, Ch. 623, L. 1985; amd. Sec. 8, Ch. 531, L. 1989; amd. Sec. 8, Ch. 695, L. 1991; amd. Sec. 2, Ch. 700, L. 1991; amd. Sec. 8, Ch. 506, L. 1993; amd. Sec. 8, Ch. 397, L. 1995.

Cross-References

Due date of report, 15-23-103.

15-23-503. Net proceeds — how computed. (1) The department of revenue shall calculate from the returns the gross product yielded from a mine and its gross value for the year covered by the statement and shall calculate and compute the net proceeds of the mine yielded to the person engaged in mining. Except as provided in 15-23-515 through 15-23-518, net proceeds must be determined by subtracting from the value of the gross product of the mine the following:

(a) all royalty paid or apportioned in cash or in kind by the person engaged in mining;

(b) all money expended for necessary labor, machinery, and supplies needed and used in the mining operations and developments;

(c) all money expended for improvements, repairs, and betterments necessary in and about the working of the mine, except as provided in this section;

(d) all money expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine;

(e) depreciation in the sum of 6% of the assessed valuation of the milling and reduction works for the calendar year for which the return is made;

(f) all money actually expended for transporting the ores and mineral products or deposits from the mines to the mill or reduction works or to the place of sale and for extracting the metals and minerals and for marketing the product and the conversion of the product into money;

(g) all money expended for insurance and welfare and retirement costs reported in the statement required in 15-23-502;

(h) all money expended for necessary labor, equipment, and supplies for testing minerals extracted to satisfy federal or state health and safety laws or regulations, for plant security in

Montana, for assaying and sampling the extracted minerals, for the cost of reclamation at the site of the mine, and for engineering and geological services conducted in Montana for existing mining operations but not including services beyond the stage of reduction and beneficiation of the minerals.

(2) In computing the deductions allowable for repairs, improvements, and betterments to the mine, the department shall allow 10% of the cost each year for a period of 10 years.

(3) Money invested in mines or improvements may not be allowed as a deduction unless all machinery, equipment, and buildings represented by the money are returned to the county in which the mine is located for assessment purposes at the level of assessment of all other property in the county.

(4) Money invested in the mines and improvements during any year except the year for which the statement is made and except as provided in this section may not be included in the expenditures, and the expenditures may not include the salary or any portion of the salary of any person or officer not actually engaged in the working of the mine or superintending the management of the mine.

History: En. Sec. 2, Ch. 237, L. 1921; re-en. Sec. 2090, R.C.M. 1921; amd. Sec. 2, Ch. 191, L. 1925; amd. Sec. 2, Ch. 139, L. 1927; amd. Sec. 2, Ch. 161, L. 1933; amd. Sec. 2, Ch. 188, L. 1935; re-en. Sec. 2090, R.C.M. 1935; amd. Sec. 1, Ch. 57, L. 1951; amd. Sec. 1, Ch. 257, L. 1959; amd. Sec. 109, Ch. 405, L. 1973; amd. Sec. 15, Ch. 98, L. 1977; R.C.M. 1947, 84-5403; amd. Sec. 2, Ch. 528, L. 1983; amd. Sec. 2, Ch. 623, L. 1985; amd. Sec. 9, Ch. 531, L. 1989; amd. Sec. 9, Ch. 695, L. 1991; amd. Sec. 9, Ch. 506, L. 1993; amd. Sec. 9, Ch. 397, L. 1995.

Cross-References

Classification and tax rate for net proceeds of mines, 15-6-131.
Assessment, 15-8-111.
Transmission of value to counties, 15-23-106.

15-23-504. Lien of tax and penalty. The tax and penalty so assessed on net proceeds are a lien upon all of the right, title, and interest of such operator in or to such mine or mining claim and upon all of the right, title, and interest in or to the machinery, buildings, tools, and equipment used in operating the mine or mining claim. The tax and penalty on such net proceeds may be collected and the payment enforced by the seizure and sale of the personal property upon which the tax and penalty are a lien in the same manner as other personal property is seized and sold for delinquent taxes or by the sale of the mine and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction. Resort to any one of the methods of enforcing collection shall not bar the right to resort to either or both of the other methods, but any two or all of the methods may be used until the full amount of such tax and penalty is collected.

History: En. Sec. 4, Ch. 161, L. 1933; re-en. Sec. 2090.2, R.C.M. 1935; amd. Sec. 2, Ch. 138, L. 1969; amd. Sec. 16, Ch. 98, L. 1977; R.C.M. 1947, 84-5405.

Cross-References

Sale of personal property for delinquent taxes, 15-16-119.
Collection of delinquent taxes by suit, Title 15, ch. 16, part 5.
Sale of real property for delinquent taxes, Title 15, ch. 17.
Lien of mines net proceeds tax, 15-23-504.

15-23-505. Assessment of royalties. Upon receipt of the list or schedule setting forth the names and addresses of any and all persons owning or claiming royalty and the amount paid or yielded as royalty to the royalty owners or claimants during the year for which the return is made, the department of revenue shall proceed to assess and tax the royalties on the same basis as net proceeds of mines are taxed as provided by 15-6-131.

History: En. Sec. 3, Ch. 188, L. 1935; re-en. Sec. 2090.3, R.C.M. 1935; amd. Sec. 196, Ch. 516, L. 1973; amd. Sec. 64, Ch. 566, L. 1977; R.C.M. 1947, 84-5406; amd. Sec. 19, Ch. 693, L. 1979.

Cross-References

Transmission of value to counties, 15-23-106.

15-23-506. False or fraudulent reports. If any report required by this part contains any willfully false or fraudulent statements as to the gross amount received by any person engaged in mining for any mine's product, then the department shall compute the gross value of such mine's product based upon the average quotations of the price of such mine's product in New York City or the relative market value at the point of delivery as evidenced by some established authority or market report. If any such person has sold or otherwise disposed of any of its mine's product at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the department shall compute the gross value of such portion of the mine's product so sold or disposed of substantially below the market price, which gross value shall be based upon the quotations of the price of such mine's product in New York City or the relative market value at the point of delivery at the time such portion of the product was so sold or otherwise disposed of as evidenced by some established authority or market report. Should there be no quotation covering any particular product, then the department shall fix the value of such gross product or such portion thereof as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

History: En. Sec. 4, Ch. 188, L. 1935; re-en. Sec. 2090.4, R.C.M. 1935; amd. Sec. 197, Ch. 516, L. 1973; amd. Sec. 17, Ch. 98, L. 1977; R.C.M. 1947, 84-5407.

Cross-References

Failure to file report, 15-23-104.

15-23-507. Taxation and payment on royalty interests. At the time of computing net proceeds assessments, the department shall also determine the royalty lists or schedules for each county in which the mines and mining claims are located. The department shall prepare from the net proceeds and royalty assessments a tax roll that must be furnished to the county treasurer on or before the following September 15. Upon furnishing the tax roll, the taxes are due and payable. Assessments of royalty on production of metals and minerals other than petroleum and natural gas must be entered by the department in the property tax record in the name of the recipient or owner of the royalty. The county treasurer shall give full notice of the assessment to the recipient or royalty owner and shall collect the taxes in the same manner as taxes on net proceeds of mines. Taxes on the royalty assessments and taxes on net proceeds of mines are payable at the times specified in 15-16-102, and any delinquencies in the payment are subject to the interest and penalties provided in 15-16-102.

History: En. Sec. 6, Ch. 188, L. 1935; re-en. Sec. 2091.1, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1939; amd. Sec. 2, Ch. 257, L. 1959; amd. Sec. 199, Ch. 516, L. 1973; amd. Sec. 1, Ch. 398, L. 1975; R.C.M. 1947, 84-5409; amd. Sec. 98, Ch. 27, Sp. L. November 1993.

15-23-508. Lien of tax — enforcement of payment. (1) The taxes on such net proceeds must be levied as the levy of other taxes is provided for, and every such tax is a lien upon the mine or mining claim from which the ore or mineral products or deposits are mined or extracted and is a prior lien upon all personal property and improvements used in the process of extracting such ore or mineral products or deposits, provided such personal or real property is owned by or under lease by the person who extracted said ore, mineral products, or deposits.

(2) The tax on such net proceeds may be collected and the payment thereof enforced by the seizure and sale of the personal property upon which the tax is a lien in the same manner as other personal property is seized and sold for delinquent taxes or by the sale of the mine or mining claim and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction. A resort to any one of the methods of enforcing collection as herein provided for shall not bar the right to resort to either or both of the other methods, but any two or all of the methods herein provided for may be used until the full amount of such tax is collected.

History: En. Sec. 7, Ch. 237, L. 1921; re-en. Sec. 2095, R.C.M. 1921; amd. Sec. 1, Ch. 143, L. 1925; re-en. Sec. 2095, R.C.M. 1935; amd. Sec. 20, Ch. 52, L. 1977; R.C.M. 1947, 84-5413.

Cross-References

Sale of personal property for delinquent taxes, 15-16-119.
Collection of delinquent taxes by suit, Title 15, ch. 16, part 5.
Sale of real property for delinquent taxes, Title 15, ch. 17.
Lien of mines net proceeds tax, 15-23-504.

15-23-509. Repealed. Sec. 35, Ch. 581, L. 1979.

History: En. Sec. 5, Ch. 237, L. 1921; re-en. Sec. 2093, R.C.M. 1921; re-en. Sec. 2093, R.C.M. 1935; R.C.M. 1947, 84-5411.

15-23-510 through 15-23-514 reserved.

15-23-515. Net proceeds for talc — statement — value. (1) A statement of gross yield and value, required in 15-23-502, that is filed by a producer of talc must contain the following:

(a) the name and address of the owner or lessee or operator of the mine, together with the name and address of any person owning or claiming a royalty interest in the mineral product of the mine or the proceeds derived from the sale of the mineral product, and the amount or amounts paid or yielded as royalty to each person during the period covered by the statement;

(b) the description and location of the mine;

(c) the number of tons of talc extracted, produced, and treated or sold from the mine during the period covered by the statement;

(d) the amount and character of the talc and the yield of the talc from the mine, measured in tons, yielded to the person engaged in mining and to each royalty holder, if any, during the period covered by the statement; and

(e) the gross yield or value in dollars and cents.

(2) (a) For the purposes of this section, the gross yield or value of talc is determined by multiplying the number of tons of talc reported under subsection (1)(c) by:

(i) for the taxable year beginning January 1, 1989, $4.25; and

(ii) for the taxable years beginning January 1, 1990, and thereafter, the product obtained by multiplying $4.25 by the quotient of the PCE for the first quarter of the year previous to the taxable year for which the net proceed value is being calculated, divided by the PCE for the first quarter of the 1989 taxable year.

(b) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

History: En. Sec. 1, Ch. 531, L. 1989; amd. Sec. 10, Ch. 695, L. 1991.

15-23-516. Net proceeds for vermiculite — statement — value. (1) A statement of gross yield and value, required in 15-23-502, that is filed by a producer of vermiculite must contain the following:

(a) the name and address of the owner, lessee, or operator of the mine, together with the name and address of any person owning or claiming a royalty interest in the mineral product of the mine or the proceeds derived from the sale of the mineral product, and the amount or amounts paid or yielded as royalty to each person during the period covered by the statement;

(b) the description and location of the mine;

(c) the number of tons of vermiculite extracted, produced, and treated or sold from the mine during the period covered by the statement;

(d) the amount and character of the vermiculite and the yield of the vermiculite from the mine, measured in tons, yielded to the person engaged in mining and to each royalty holder, if any, during the period covered by the statement; and

(e) the gross yield or value in dollars and cents.

(2) (a) For the purposes of this section, the gross yield or value of vermiculite is determined by multiplying the number of tons of vermiculite reported under subsection (1)(c) by:

(i) for the taxable year beginning January 1, 1991, $27; and

(ii) for the taxable years beginning January 1, 1992, and thereafter, the product obtained by multiplying $27 by the quotient of the PCE for the first quarter of the year previous to the taxable year for which the net proceed value is being calculated, divided by the PCE for the first quarter of the 1991 taxable year.

(b) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

History: En. Sec. 1, Ch. 695, L. 1991.

15-23-517. Net proceeds for limestone — statement — value. (1) A statement of gross yield and value, required in 15-23-502, that is filed by a producer of limestone extracted for the production of quicklime must contain the following:

(a) the name and address of the owner, lessee, or operator of the mine, together with the name and address of any person owning or claiming a royalty interest in the mineral product of the mine or the proceeds derived from the sale of the mineral product, and the amount or amounts paid or yielded as royalty to each person during the period covered by the statement;

(b) the description and location of the mine;

(c) the number of tons of limestone extracted and sold either as limestone or quicklime from the mine during the period covered by the statement;

(d) the amount and character of the limestone and the yield of the limestone from the mine, measured in tons, yielded to the person engaged in mining and to each royalty holder, if any, during the period covered by the statement; and

(e) the gross yield or value in dollars and cents.

(2) (a) For purposes of this section, the gross yield or value of limestone is determined by multiplying the number of tons of limestone reported under subsection (1)(c) by:

(i) for the tax year beginning January 1, 1993, 34 cents; and

(ii) for the taxable years beginning January 1, 1994, and thereafter, the product obtained by multiplying 34 cents by the quotient of the PCE for the first quarter of the year previous to the taxable year for which the net proceeds value is being calculated, divided by the PCE for the first quarter of the 1992 taxable year.

(b) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

History: En. Sec. 1, Ch. 506, L. 1993.

15-23-518. Net proceeds for industrial garnets and byproducts — statement — value — exemption. (1) A statement of gross yield and value, required in 15-23-502, that is filed by a producer of industrial garnets and associated byproducts must contain the following:

(a) the name and address of the owner, lessee, or operator of the mine, together with the name and address of any person owning or claiming a royalty interest in the mineral product of the mine or the proceeds derived from the sale of the mineral product, and the amount or amounts paid or yielded as royalty to each person during the period covered by the statement;

(b) the description and location of the mine;

(c) (i) the number of tons of rougher garnet concentrate produced by initial concentration and sold from the mine during the period covered by the statement; and

(ii) the gross revenue received from any byproduct produced and sold as a result of the garnet mining operation.

(d) the amount and character of the industrial garnet and byproducts from the mine and the amount of the industrial garnets measured in tons and associated byproducts measured in dollars yielded to the person engaged in mining and to each royalty holder, if any, during the period covered by the statement; and

(e) the gross yield or value in dollars and cents.

(2) (a) For the purposes of this section, the gross yield or value of industrial garnets is determined by multiplying the number of tons of rougher garnet concentrate reported under subsection (1)(c)(i) by:

(i) for the tax year beginning January 1, 1996, $20; and

(ii) for the tax years beginning January 1, 1997, and thereafter, the product obtained by multiplying $20 by the quotient of the PCE for the first quarter of the year previous to the tax year for which the net proceed value is being calculated, divided by the PCE for the first quarter of the 1995 tax year.

(b) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) The gross yield or value of the byproducts produced and sold as a result of industrial garnet production is determined by multiplying the gross revenue reported under subsection (1)(c)(ii) by 30%.

(3) For the purposes of this section, "associated byproducts" means gold, silver, copper, lead, or any other mineral or precious or semiprecious gems or stones that are produced, processed, and sold in conjunction with the mining and processing of industrial garnets.

(4) A person who produces and sells associated byproducts subject to taxation under this section is not required to file a statement or pay the tax on the associated byproducts under Title 15, chapter 23, part 8, or under Title 15, chapter 37, part 1.

(5) (a) Except as provided in subsection (5)(b), a person is not liable for the net proceeds tax on 1,000 tons or less of rougher garnet concentrate, including the value of associated byproducts, produced and sold in a calendar year.

(b) A person who produces and sells more than 1,000 tons of rougher garnet concentrate in a calendar year is liable for the net proceeds tax on all rougher garnet concentrate, including the value of associated byproducts, produced and sold in the calendar year.

History: **En. Sec. 1, Ch. 397, L. 1995.**

15-23-519 and 15-23-520 reserved.

15-23-521. Examination of records by department. The department of revenue may at any time examine the records of any person specified in this part as the records may pertain to the yield of ore or mineral products or deposit in order to verify the statements made by the person. If from the examination or from other information, the department finds any statement or any material part of a statement willfully false or fraudulent, the department must assess in the same manner as provided for in 15-23-503, 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

History: **En. Sec. 6, Ch. 237, L. 1921; re-en. Sec. 2094, R.C.M. 1921; re-en. Sec. 2094, R.C.M. 1935; amd. Sec. 201, Ch. 516, L. 1973; R.C.M. 1947, 84-5412; amd. Sec. 10, Ch. 531, L. 1989; amd. Sec. 11, Ch. 695, L. 1991; amd. Sec. 10, Ch. 506, L. 1993; amd. Sec. 10, Ch. 397, L. 1995.**

15-23-522. Surface ground and improvements not exempt. Nothing in this part must be construed so as to exempt from taxation the surface ground, improvements, buildings, erections, structures, or machinery placed upon any mine or mining claim or used in connection therewith or supplies used either in mills, reduction works, or mines.

History: **En. Sec. 8, Ch. 237, L. 1921; re-en. Sec. 2096, R.C.M. 1921; re-en. Sec. 2096, R.C.M. 1935; R.C.M. 1947, 84-5414.**

15-23-523. Dissolved corporations to make returns on net proceeds of mines and pay tax accrued. Every corporation which shall be dissolved or cease to do business in this state during any taxpaying year shall make all statements, reports, and returns required by law to be made with reference to the net proceeds of mines and pay the tax due for such period as it transacted business on or before the date of such dissolution or cessation of business. The department of revenue may grant a reasonable extension of time for filing a return upon good cause shown therefor.

History: **En. Sec. 1, Ch. 10, L. 1941; amd. Sec. 202, Ch. 516, L. 1973; R.C.M. 1947, 84-5415.**

Part 6
Oil and Gas Net Proceeds
(Repealed)

15-23-601. Repealed. Sec. 50, Ch. 451, L. 1995.

History: **En. Sec. 1, Ch. 135, L. 1955; amd. Sec. 21, Ch. 52, L. 1977; amd. Sec. 18, Ch. 98, L. 1977; R.C.M. 1947, 84-6201; amd. Sec. 1, Ch. 525, L. 1981; amd. Sec. 1, Ch. 695, L. 1985; amd. Sec. 10, Ch. 655, L. 1987; amd. Sec. 1, Ch. 267, L. 1991; amd. Sec. 2, Ch. 9, Sp. L. November 1993.**

15-23-602. Repealed. Sec. 50, Ch. 451, L. 1995.

History: **En. Sec. 2, Ch. 135, L. 1955; amd. Sec. 1, Ch. 159, L. 1969; amd. Sec. 117, Ch. 405, L. 1973; amd. Sec. 19, Ch. 98, L. 1977; R.C.M. 1947, 84-6202; amd. Sec. 1, Ch. 425, L. 1981; amd. Sec. 2, Ch. 525, L. 1981; amd. Sec. 3, Ch. 606, L. 1983; amd. Sec. 2, Ch. 695, L. 1985; amd. Sec. 11, Ch. 655, L. 1987; amd. Sec. 73, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 267, L. 1991; amd. Sec. 3, Ch. 9, Sp. L. November 1993.**

15-23-603. Repealed. Sec. 50, Ch. 451, L. 1995.

History: **En. Sec. 3, Ch. 135, L. 1955; amd. Sec. 230, Ch. 516, L. 1973; amd. Sec. 20, Ch. 98, L. 1977; R.C.M. 1947, 84-6203; amd. Sec. 2, Ch. 425, L. 1981; amd. Sec. 3, Ch. 525, L. 1981; amd. Sec. 3, Ch. 383, L. 1983; amd. Sec. 1, Ch. 642, L. 1985; amd. Sec. 3, Ch. 695, L. 1985; amd. Sec. 2, Ch. 724, L. 1985; amd. Sec. 12, Ch. 655, L. 1987; amd. Sec. 74, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 267, L. 1991; amd. Sec. 8, Ch. 597, L. 1991; amd. Sec. 4, Ch. 9, Sp. L. November 1993.**

15-23-604. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. Sec. 4, Ch. 135, L. 1955; amd. Sec. 231, Ch. 516, L. 1973; amd. Sec. 5, Ch. 256, L. 1977; R.C.M. 1947, 84-6204(part); amd. Sec. 2, Ch. 642, L. 1985; amd. Sec. 13, Ch. 655, L. 1987.

15-23-605 through 15-23-614. Repealed. Sec. 50, Ch. 451, L. 1995.

Compiler's Comments

Histories of Repealed Sections:

15-23-605. En. Sec. 5, Ch. 135, L. 1955; amd. Sec. 232, Ch. 516, L. 1973; amd. Sec. 68, Ch. 566, L. 1977; R.C.M. 1947, 84-6205; amd. Sec. 3, Ch. 425, L. 1981; amd. Sec. 4, Ch. 525, L. 1981; amd. Sec. 4, Ch. 383, L. 1983; amd. Sec. 4, Ch. 695, L. 1985; amd. Sec. 14, Ch. 655, L. 1987; amd. Sec. 11, Ch. 83, L. 1989; amd. Sec. 75, Ch. 11, Sp. L. June 1989.

15-23-606. En. Sec. 6, Ch. 135, L. 1955; amd. Sec. 233, Ch. 516, L. 1973; R.C.M. 1947, 84-6206.

15-23-607. En. Sec. 8, Ch. 135, L. 1955; amd. Sec. 1, Ch. 80, L. 1963; amd. Sec. 235, Ch. 516, L. 1973; amd. Sec. 6, Ch. 256, L. 1977; R.C.M. 1947, 84-6208; amd. Sec. 5, Ch. 695, L. 1985; amd. Sec. 15, Ch. 655, L. 1987; amd. Sec. 76, Ch. 11, Sp. L. June 1989; amd. Sec. 4, Ch. 267, L. 1991; amd. Sec. 2, Ch. 711, L. 1991; amd. Sec. 4, Ch. 790, L. 1991; amd. Sec. 5, Ch. 9, Sp. L. November 1993; amd. Sec. 99, Ch. 27, Sp. L. November 1993.

15-23-608. En. Sec. 13, Ch. 135, L. 1955; amd. Sec. 2, Ch. 159, L. 1969; R.C.M. 1947, 84-6213.

15-23-609. En. Sec. 11, Ch. 135, L. 1955; amd. Sec. 237, Ch. 516, L. 1973; R.C.M. 1947, 84-6211.

15-23-610. En. Sec. 12, Ch. 135, L. 1955; amd. Sec. 238, Ch. 516, L. 1973; R.C.M. 1947, 84-6212.

15-23-611. En. Sec. 14, Ch. 135, L. 1955; R.C.M. 1947, 84-6214.

15-23-612. En. 84-2213 by Sec. 2, Ch. 256, L. 1977; R.C.M. 1947, 84-2213(part); amd. Sec. 16, Ch. 655, L. 1987; amd. Sec. 6, Ch. 9, Sp. L. November 1993.

15-23-613. En. Sec. 11, Ch. 695, L. 1985; amd. Sec. 17, Ch. 655, L. 1987; amd. Sec. 5, Ch. 267, L. 1991; amd. Sec. 7, Ch. 9, Sp. L. November 1993.

15-23-614. En. Sec. 8, Ch. 9, Sp. L. November 1993.

15-23-615. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. Sec. 1, Ch. 383, L. 1983.

15-23-616. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. Sec. 2, Ch. 383, L. 1983; amd. Sec. 43, Ch. 370, L. 1987.

15-23-617 through 15-23-620 reserved.

15-23-621. Repealed. Sec. 50, Ch. 451, L. 1995.

History: En. Sec. 18, Ch. 655, L. 1987; amd. Sec. 6, Ch. 267, L. 1991.

15-23-622 through 15-23-630 reserved.

15-23-631. Repealed. Sec. 50, Ch. 451, L. 1995.

History: En. Sec. 1, Ch. 536, L. 1989.

Part 7
Coal Gross Proceeds

Part Cross-References

Classification and taxable percentage of coal gross proceeds, 15-6-132.

Coal severance tax, Title 15, ch. 35.

15-23-701. Reporting gross yield from coal. (1) Each person engaged in mining coal must, on or before March 31 each year, file with the department of revenue a statement of the gross yield from each coal mine owned or worked by such person in the preceding calendar year and the value thereof. The statement shall be in the form prescribed by the department, which may be coordinated with the form used under 15-35-104 and must be verified by an officer of the firm. The statement shall include:

(a) the name and address of the owner or lessee or operator of the mine;

(b) the location of the mine;

(c) the tons of coal extracted, treated, and sold from the mine during the taxable period;

(d) the gross yield or value in dollars and cents derived from the contract sales price as defined in 15-35-102.

(2) Whenever value is imputed under 15-35-107(1)(b), that value shall be used for purposes of reporting the value of the gross yield of coal under this section.

History: En. 84-1320 by Sec. 9, Ch. 525, L. 1975; amd. Sec. 3, Ch. 156, L. 1977; R.C.M. 1947, 84-1320; (2)En. Sec. 2, Ch. 326, L. 1983; amd. Sec. 44, Ch. 370, L. 1987.

Cross-References

Due date of report, 15-23-103.

Transmission of value to counties, 15-23-106.

15-23-702. Entry of gross proceeds in property tax record. On or before July 1 each year, the department shall enter the valuation of the gross proceeds of coal mines in the property tax record for each county in which the mines are located.

History: **En. 84-1321 by Sec. 10, Ch. 525, L. 1975; R.C.M. 1947, 84-1321; amd. Sec. 100, Ch. 27, Sp. L. November 1993.**

15-23-703. Taxation of gross proceeds — taxable value for county classification and guaranteed tax base aid to schools. (1) The department shall compute from the reported gross proceeds from coal a tax roll that must be transmitted to the county treasurer on or before September 15 each year. The department may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall proceed to give full notice, as provided in 15-16-101, to each coal producer of the taxes due and shall collect the taxes.

(2) For county classification and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102.

(3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

(4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount determined under subsection (3) and the amounts received under 15-23-706:

(a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as impact aid money, as provided in 20 U.S.C. 7701, et seq., in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.

(5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department for redistribution as provided in 15-23-706.

(b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(8) The county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year.

History: En. 84-1322 by Sec. 11, Ch. 525, L. 1975; R.C.M. 1947, 84-1322; amd. Sec. 77, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 610, L. 1991; amd. Sec. 2, Ch. 641, L. 1991; amd. Sec. 3, Ch. 711, L. 1991; amd. Sec. 5, Ch. 790, L. 1991; amd. Sec. 101, Ch. 27, Sp. L. November 1993; amd. Sec. 3, Ch. 318, L. 1995; amd. Sec. 1, Ch. 22, L. 1997; amd. Sec. 62, Ch. 42, L. 1997; amd. Sec. 27, Ch. 29, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 29 at beginning of (2) after "For" deleted "bonding"; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 35, Ch. 29, L. 2001, provided: "(1) [This act] applies to the authorization and issuance of bonds occurring on or after July 1, 2001.

(2) Debt limits established under [this act] do not apply to bonds authorized before July 1, 2001, regardless of when the bonds are issued."

15-23-704. Lien of tax — enforcement of payment. The tax on gross proceeds from coal must be levied as taxes on other forms of property, and this tax and the severance tax on coal production are each a lien upon the coal mine and a prior lien upon all personal property and improvements used to produce the coal. These taxes may be collected by the seizure and sale of the personal property on which the tax is a lien as provided under 15-16-119 and 15-17-911.

History: En. 84-1323 by Sec. 12, Ch. 525, L. 1975; R.C.M. 1947, 84-1323; amd. Sec. 50, Ch. 587, L. 1987; amd. Sec. 102, Ch. 27, Sp. L. November 1993.

Cross-References

Lien for payment of coal severance tax, 15-35-105.

15-23-705. Department to calculate unit value. (1) Except as provided in subsection (2), for the purposes of the distribution of coal gross proceeds taxes collected under this part, the department shall determine the unit value of coal for each mine in each taxing unit. The unit value for coal for each mine in each taxing unit is the quotient obtained by dividing the gross proceeds taxes calculated on coal produced in that taxing unit in calendar year 1988 by the number of tons of coal extracted, treated, and sold in that taxing unit during 1988.

(2) The unit value calculation does not apply to coal mines that began production after December 31, 1988.

History: En. Sec. 1, Ch. 641, L. 1991.

15-23-706. Department to determine redistribution of coal gross proceeds to taxing jurisdictions. (1) The coal gross proceeds redistribution account established in 15-23-707 is statutorily appropriated, as provided in 17-7-502, for allocation to the county for redistribution as provided in subsections (2) and (3).

(2) Each year the department shall determine the amount of tax collected under this part from within each taxing unit in the county. If the amount collected by each county is less than the amount determined under 15-23-703(3) for that county, the department shall, on or before June 30 of each year, send the amount of the difference from the state special revenue account established in 15-23-707 to the county treasurer for redistribution as provided in 15-23-703(4).

(3) If the amount received by the department for redistribution is less than or more than the redistribution amount determined in subsection (2), the department shall calculate and redistribute the shortage or excess amount in the following manner:

(a) If a county does not receive the entire amount to which it is entitled under subsection (2), the shortage amounts of each taxing unit must be divided by the total shortage amounts of all taxing units determined under 15-23-703(3) to obtain a shortage percentage for each taxing unit. The shortage percentage for each taxing unit must be multiplied by the amount that is available for redistribution to each taxing unit, and this amount must be redistributed to each respective taxing unit.

(b) If there are excess amounts after the redistribution provided for in subsection (2), the excess amounts must be redistributed to the county of origin in proportion to the amount each taxing unit in the county contributed for redistribution.

(4) The county treasurer shall distribute the money received under subsection (3)(b) of this section as provided in 15-23-703(4).

History: En. Sec. 3, Ch. 641, L. 1991; amd. Sec. 63, Ch. 42, L. 1997.

15-23-707. Coal gross proceeds redistribution account. (1) There is within the state special revenue fund a coal gross proceeds redistribution account.

(2) All money received from county treasurers as provided in 15-23-703(5)(a) must be deposited by the department into the coal gross proceeds redistribution account for redistribution as provided in 15-23-706.

History: En. Sec. 4, Ch. 641, L. 1991; amd. Sec. 64, Ch. 42, L. 1997.

15-23-708 through 15-23-715 reserved.

15-23-716. Terminated. Sec. 39, Ch. 15, Sp. L. July 1992.

History: En. Sec. 1, Ch. 15, Sp. L. July 1992; amd. Sec. 2, Ch. 455, L. 1993.

Part 8
Metal Mines Gross Proceeds

Part Cross-References

Classification and taxable percentage for metal mines gross proceeds, 15-6-132.

Mining license taxes, Title 15, ch. 37.

15-23-801. Definitions. As used in this part, the following definitions apply:

(1) "Agreement not at arm's length" means an agreement between parties when the sales price does not represent market value.

(2) "Gross proceeds" or "gross metal yield" or "gross value of product" means the receipts realized from the extraction and sale of metals or concentrate containing metals.

(3) "Merchantable value" means the receipts of all salable metals produced or extracted in a county over a 12-month period. If the extracted ores are milled, smelted, or reduced by the taxpayer, then the merchantable value in the county in which they are extracted is the receipts received for these metals after processing.

(4) "Receipts received" means the monetary payment or refined metal received by the mining company from the metal trader, smelter, roaster, or refinery, determined by multiplying the quantity of metal received by the metal trader, smelter, roaster, or refinery by the quoted price for the metal and then subtracting the following:

(a) basic treatment and refinery charges;

(b) costs of transporting the mineral product from the mine or mill to the smelter or other processor, including costs of demurrage, storage, interest, and other miscellaneous costs related to transporting the mineral product;

(c) quantity deductions;

(d) price deductions;

(e) interest; and

(f) penalty metal, impurity, and moisture deductions as specified by contract between the mining company and the receiving metal trader, smelter, roaster, or refinery.

History: En. 84-7901 by Sec. 7, Ch. 498, L. 1977; R.C.M. 1947, 84-7901; amd. Sec. 1, Ch. 672, L. 1989; amd. Sec. 1, Ch. 524, L. 1999.

Cross-References

Minerals as real estate, 15-1-101.

15-23-802. Metal mines — ad valorem taxation — reports and sampling. (1) Each person mining or extracting gold, silver, copper, lead, or other metals from any mine or mining property located within this state must, on or before March 31 each year, file with the department of revenue a statement of the gross metal yield from each mine or mining property owned or worked by such person in the preceding calendar year and the value thereof. The statement shall be in the form prescribed by the department and shall contain the following:

(a) the name, address, and telephone number of the owner, lessee, or operator of the mine or mining property;

(b) the mine's location by county and legal description;

(c) the number of tons of ore, concentrate, or other mineral products or deposits extracted from the mine or mining property during the period covered by the statement;

(d) the name and location of the smelter, mill, or reduction works to which such ore, concentrate, or other mineral products or deposits have been shipped or sold during the period covered by the statement;

(e) the gross yield of such ores, concentrates, mineral products, or deposits in constituents of commercial value; that is, the number of ounces of gold or silver, pounds of copper, lead, or zinc, or other commercially valuable constituents of such ores, concentrates, or mineral products or deposits, measured by standard units of measurement, during the period covered by the statement;

(f) the gross value of product in dollars and cents; and

(g) any other information requested by the department.

(2) This section applies regardless of the location of any smelter, mill, or reduction works to which the ore, concentrate, or other mineral products or deposits are shipped.

(3) Any sampling, testing, or assaying made necessary to comply with this section must be completed within this state and prior to any mixture of the ore or concentrate to be assayed with ore or concentrate from any other mine or mining property.

History: En. 84-7902 by Sec. 8, Ch. 498, L. 1977; R.C.M. 1947, 84-7902; amd. Sec. 1, Ch. 288, L. 1981.

15-23-803. Valuation — gross proceeds. On or before July 1 each year, the department shall determine the merchantable value of all metal production from the previous calendar year. The department shall record the merchantable value in the property tax record after subtracting the portion of the proceeds exempt from property taxation.

History: En. 84-7903 by Sec. 9, Ch. 498, L. 1977; R.C.M. 1947, 84-7903; amd. Sec. 103, Ch. 27, Sp. L. November 1993.

15-23-804. Taxation of merchantable value. The department shall prepare from the reported valuation a tax roll that must be transmitted to the county treasurer on or before September 15 each year. The county treasurer shall proceed to give full notice to each metal producer and to collect the taxes due at the times provided for in 15-16-102, and any delinquencies in the payment of the taxes are subject to the interest and penalties provided for in 15-16-102.

History: En. 84-7904 by Sec. 10, Ch. 498, L. 1977; R.C.M. 1947, 84-7904; amd. Sec. 104, Ch. 27, Sp. L. November 1993.

15-23-805. Imputed value — procedure for metals. If there is no sale or the sale is by an agreement not at arm's length or no statement is filed, the department shall impute the merchantable value of the metal. When imputing value, the department shall consider all appropriate market information available. When the imputed value is contested in any proceedings, the burden of proof is with the contesting party.

History: En. 84-7905 by Sec. 11, Ch. 498, L. 1977; R.C.M. 1947, 84-7905.

15-23-806. Lien of tax. The tax or penalty on gross proceeds is a lien upon the mine from which the metal is extracted and is a prior lien upon all owned or leased personal property and improvements used in extracting the ore or metal. The tax shall be collected in the manner provided in chapters 16, 17, and 18 of this title.

History: En. 84-7906 by Sec. 12, Ch. 498, L. 1977; R.C.M. 1947, 84-7906; amd. Sec. 12, Ch. 581, L. 1979.

15-23-807. Assessment procedures. The gross proceeds of metal mines shall be assessed under the provisions of 15-23-101 through 15-23-107.

History: En. 84-7907 by Sec. 13, Ch. 498, L. 1977; R.C.M. 1947, 84-7907; amd. Sec. 13, Ch. 581, L. 1979.

CHAPTER 24

SPECIAL PROPERTY TAX APPLICATIONS

Part 1 — Motor Vehicle Fleets
(Repealed. Sec. 41, Ch. 496, L. 1997)

Part 2 — Mobile Homes

15-24-201. Definitions.
15-24-202. Payment of tax — interest and penalty — display of tax-paid sticker.
15-24-203. Tax receipt — when production required.
15-24-204. Failure to display or produce declaration, sticker, or receipt — penalty.
15-24-205. Sections limited to taxable trailers and manufactured homes.
15-24-206. Declaration of destination on imported mobile homes and manufactured homes — display — tax receipt — exemptions.
15-24-207. Department to make rules.
15-24-208. Penalty for moving mobile home or manufactured home on which taxes due.
15-24-209. Limit on delinquent mobile home or manufactured home taxes chargeable to security interest holder.
15-24-210. Notice of impending sale to certain lienholders.

Part 3 — Migratory Personal Property

15-24-301. Personal property brought into the state — assessment — exceptions — custom combine equipment.
15-24-302. Collection procedure.
15-24-303. Proration of tax on personal property — refund.
15-24-304. Prorated fee in lieu of tax — aircraft.
15-24-305. Taxation of motion picture and television commercial property.

Part 4 — Business Inventories
(Repealed)

15-24-401. Repealed.
15-24-402. Repealed.
15-24-403. Repealed.

Part 5 — Banks
(Repealed. Sec. 17, Ch. 634, L. 1979)

Part 6 — Insurance Companies

15-24-601. Assessment and taxation of insurance companies.
15-24-602. Determining insurance company taxable property.
15-24-603. Repealed.

Part 7 — Production Credit Associations

15-24-701. Production credit associations — assessment and payment.

Part 8 — Building and Loan Associations

15-24-801. Savings and loan associations — taxation.

Part 9 — Livestock

15-24-901. Definition.
15-24-902. Number of livestock.
15-24-903. Duty of owner to assist in assessment.
15-24-904. Penalty for violation of law.
15-24-905. Livestock brought into state — notice to department.
15-24-906. Collection of tax on livestock.
15-24-907. Repealed.
15-24-908 through 15-24-911. Repealed.
15-24-912 through 15-24-919 reserved.
15-24-920. Election for proration of tax on livestock — refunds — additional assessment.
15-24-921. Per capita fee to pay expenses of enforcing livestock laws.
15-24-922. Board of livestock to prescribe per capita fee — refunds — per capita fee on average inventory.
15-24-923. Repealed.
15-24-924. Repealed.
15-24-925. Reimbursement to department — transmission of fees to state.
15-24-926. Livestock reserve fund.
15-24-927. Average inventory — computation of estimated value of livestock.
15-24-928 through 15-24-930 reserved.

15-24-931. Assessment of swine.
15-24-932 through 15-24-940 reserved.
15-24-941. Repealed.
15-24-942. Repealed.
15-24-943. Repealed.

Part 10 — Custom Combines (Renumbered)

15-24-1001. Renumbered 61-10-130.

Part 11 — Leasehold and Other Interests in U.S. Property

15-24-1101. Federal property held under contract by private person subject to taxation.
15-24-1102. Federal property held under contract of sale.
15-24-1103. Federal property held under lease.
15-24-1104. Collection of taxes on interests in United States lands.

Part 12 — State and Other Exempt Property

15-24-1201. State and other exempt property held under contract — when taxable.
15-24-1202. Taxable interests in state and other exempt property — assessment.
15-24-1203. Privilege tax on industrial, trade, or other business use of tax-exempt property — exceptions.
15-24-1204. Rate of privilege — tax credit for federal payments in lieu of taxes.
15-24-1205. Privilege tax — assessment and collection — no lien.
15-24-1206. County suit for delinquent privilege tax.
15-24-1207. Reporting requirements — penalty — rules.
15-24-1208. Apportionment of tax-exempt property.

Part 13 — Montana Economic Land Development Act (Repealed. Sec. 1, Ch. 48, L. 1985)

Part 14 — New Industry—Real Property Improvements

15-24-1401. Definitions.
15-24-1402. New or expanding industry — assessment — notification.

Part 15 — Remodeling of Buildings or Structures

15-24-1501. Remodeling, reconstruction, or expansion of buildings or structures — assessment provisions — levy limitations.
15-24-1502. Tax exemption and abatement for remodeling, reconstruction, or expansion of certain commercial property — approval.

Part 16 — Historic Properties

15-24-1601. Purpose.
15-24-1602. Definitions.
15-24-1603. Historic property tax abatement — levy limitations.
15-24-1604. Eligibility.
15-24-1605. Responsibilities of local governing bodies — local review board — design review process.
15-24-1606. Responsibilities of the state historic preservation office.
15-24-1607. Disqualification and penalty.

Part 17 — Commercial and Other Property

15-24-1701. Suspension and cancellation of collection of certain property taxes on commercial property — subordination of county tax lien — local government discretion.
15-24-1702. Resolution to suspend or cancel delinquent taxes.
15-24-1703. Application of suspension or cancellation.
15-24-1704. Terminated.

Part 18 — Business Incubators

15-24-1801. Definitions.
15-24-1802. Business incubator tax exemption — procedure.

Part 19 — Industrial Parks

15-24-1901. Definitions.
15-24-1902. Industrial park tax exemption — procedure — termination.

Part 20 — Local Economic Development Organizations

15-24-2001. Definitions.
15-24-2002. Building and land tax exemption — procedure — termination.

Parts 21 and 22 reserved

Part 23 — Clean Coal Technology Projects
(Repealed. Sec. 2, Ch. 33, Sp. L. November 1993)

Part 24 — Value-Added Manufacturing

15-24-2401. Purpose.
15-24-2402. Definitions.
15-24-2403. Expanding industry taxable value decrease — application — approval — reports.
15-24-2404. Exclusion from other property tax reductions or exemptions.
15-24-2405. Rules.

Part 25 — Trucks and Truck Tractors
(Repealed. Sec. 41, Ch. 496, L. 1997)

Parts 26 through 29 reserved

Part 30 — Electrical Generation and Delivery Facilities

15-24-3001. Electrical generation and transmission facility exemption — definitions.
15-24-3002. Rollback tax — computation.
15-24-3003 and 15-24-3004 reserved.
15-24-3005. Electrical generation facility impact fee for local governmental units and school districts.
15-24-3006. Electrical energy generation impact fee reserve account.
15-24-3007. Electrical generation impact fund.

Part 1
Motor Vehicle Fleets
(Repealed. Sec. 41, Ch. 496, L. 1997)

Part Compiler's Comments

Histories of Repealed Sections:

15-24-101. En. Sec. 1, Ch. 89, L. 1965; amd. Sec. 16, Ch. 516, L. 1973; R.C.M. 1947, 84-727; amd. Sec. 14, Ch. 614, L. 1981; amd. Sec. 8, Ch. 611, L. 1987; amd. Sec. 1, Ch. 615, L. 1989; amd. Sec. 24, Ch. 10, L. 1993; amd. Sec. 1, Ch. 39, L. 1993.

15-24-102. En. Sec. 2, Ch. 89, L. 1965; amd. Sec. 17, Ch. 516, L. 1973; amd. Sec. 54, Ch. 566, L. 1977; R.C.M. 1947, 84-728; amd. Sec. 20, Ch. 693, L. 1979; amd. Sec. 15, Ch. 614, L. 1981; amd. Sec. 25, Ch. 10, L. 1993; amd. Sec. 2, Ch. 39, L. 1993; amd. Sec. 10, Ch. 570, L. 1995.

15-24-103. En. Sec. 3, Ch. 89, L. 1965; amd. Sec. 18, Ch. 516, L. 1973; R.C.M. 1947, 84-729; amd. Sec. 16, Ch. 614, L. 1981.

15-24-104. En. Sec. 4, Ch. 89, L. 1965; amd. Sec. 19, Ch. 516, L. 1973; R.C.M. 1947, 84-730; amd. Sec. 14, Ch. 581, L. 1979; amd. Sec. 17, Ch. 614, L. 1981; amd. Sec. 105, Ch. 27, Sp. L. November 1993.

15-24-105. En. Sec. 5, Ch. 89, L. 1965; R.C.M. 1947, 84-731; amd. Sec. 18, Ch. 614, L. 1981; amd. Sec. 9, Ch. 611, L. 1987.

Part 2
Mobile Homes

Part Cross-References

Classification and taxable percentage for mobile homes and housetrailers, 15-6-134.

15-24-201. Definitions. As used in this part, the following definitions apply:

(1) "Dealer" means a person engaged in the distribution or sale of mobile homes or manufactured homes.

(2) "Housetrailer" means a form of housing designed to be moved from one place to another by an independent power connected to the housetrailer, which is either 8 feet wide or less or 45 feet long or less.

(3) "Manufactured home" means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards. A manufactured home does not include a mobile home or a housetrailer.

(4) "Mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one

place to another by an independent power connected to the mobile home or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence.

History: **En. Sec. 1, Ch. 275, L. 1965; amd. Sec. 4, Ch. 296, L. 1967; amd. Sec. 2, Ch. 450, L. 1975; R.C.M. 1947, 84-6601; amd. Sec. 11, Ch. 200, L. 1997.**

Cross-References

Definition of mobile home, 15-1-101.
Enforcement by Department of Transportation personnel, 61-12-206.

15-24-202. Payment of tax — interest and penalty — display of tax-paid sticker. (1) (a) The owner of a mobile home, manufactured home, or housetrailer which is not taxed as an improvement, as improvements are defined in 15-1-101, shall pay the personal property tax in two payments, except as provided in 15-24-206.

(b) The first payment is due on or before May 31 or within 30 days from the date of the notice of taxes due, whichever is later.

(c) The second payment is due no later than November 30 of the year in which the property is assessed.

(d) If not paid on or before the date due, the tax is considered delinquent and subject to the penalty and interest provisions in 15-16-102 applicable to other delinquent property taxes. The penalty must be assessed and interest begins to accrue on the first day of delinquency.

(2) Upon request, the treasurer shall notify a lienholder if taxes on a mobile home, manufactured home, or housetrailer have not been paid.

(3) Taxes assessed against a mobile home or manufactured home after the second payment date must be prorated to reflect the remaining portion of the tax year. The prorated taxes must be added to the following year's tax roll and, except as provided in 15-24-206, are due with and must be collected with the first payment due in that year.

(4) The department of revenue shall issue tax-paid stickers to the county treasurers. Except as provided in 15-24-206 and 15-24-209, if a mobile home, manufactured home, or housetrailer is to be moved and all taxes, interest, and penalties on the mobile home or housetrailer are paid in full, the treasurer shall issue a tax-paid sticker to the owner of the mobile home, manufactured home, or housetrailer. Prior to and while in the process of moving the mobile home, manufactured home, or housetrailer, the owner shall display the tax-paid sticker, which must be visible from the exterior of the mobile home, manufactured home, or housetrailer. A mobile home or manufactured home movement declaration of destination provided for in 15-24-206 may not be issued unless:

(a) the taxes have been paid in full to the county treasurer; or

(b) the exceptions in 15-24-206(3) or 15-24-209 apply.

(5) On the movement of a mobile home, manufactured home, or housetrailer in violation of this part, the county treasurer for the county where the mobile home, manufactured home, or housetrailer first comes to rest shall issue a written notice to the owner, showing the amount of delinquent taxes, special assessments, penalties, and interest due. In addition to the penalties provided in 15-16-102, 20% or $50, whichever is greater, must be added to the delinquent taxes as penalty for violation of this part. On receipt of the delinquent taxes, special assessments, penalties, and interest, the county treasurer shall forward all delinquent taxes, special assessments, penalties, and interest collected under 15-16-102 to the county treasurer for the county of origin. The county of destination shall retain the penalty.

History: **En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R.C.M. 1921; Cal. Pol. C. Sec. 3821; amd. Sec. 2, Ch. 102, L. 1923; re-en. Sec. 2239, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963; amd. Sec. 83, Ch. 405, L. 1973; amd. Sec. 1, Ch. 162; amd. Sec. 1, Ch. 475, L. 1975; amd. Sec. 1, Ch. 105, L. 1977; R.C.M. 1947, 84-4202(5)(a); amd. Sec. 15, Ch. 581, L. 1979; amd. Sec. 1, Ch. 159, L. 1981; amd. Sec. 1, Ch. 47, L. 1985; amd. Sec. 1, Ch. 360, L. 1987; amd. Sec. 1, Ch. 419, L. 1987; amd. Sec. 1, Ch. 238, L. 1989; amd. Sec. 1, Ch. 557, L. 1991; amd. Sec. 12, Ch. 200, L. 1997.**

Cross-References

Migratory personal property, 15-24-302.
Enforcement by Department of Transportation personnel, 61-12-206.

15-24-203. Tax receipt — when production required. If stopped on a highway or at a state vehicle weight station by a state highway patrol officer or state vehicle weight station attendant, a person transporting a mobile home, manufactured home, or housetrailer shall produce, if requested, the property-tax-paid receipt or a duplicate issued by the county treasurer where the vehicle was taxed.

History: **En. Sec. 3, Ch. 275, L. 1965; R.C.M. 1947, 84-6603; amd. Sec. 16, Ch. 581, L. 1979; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 13, Ch. 200, L. 1997.**

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-24-204. Failure to display or produce declaration, sticker, or receipt — penalty. (1) Whoever makes a false or fraudulent declaration of destination or, when required, fails to execute a declaration of destination or fails to display or produce a declaration of destination or tax-paid receipt, if a tax-paid receipt is required, is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail for not more than 6 months or by a fine of not more than $500, or both.

(2) Whoever fails to display a property-tax-paid sticker while in the process of moving a mobile home, manufactured home, or housetrailer or to produce a property-tax-paid receipt from 15 days after the due date for personal property taxes of 1 year to the due date for personal property taxes of the next year, when the display of a tax-paid receipt is required, commits a misdemeanor punishable by a fine of not less than $10 or more than $50 or confinement in the county jail for not more than 30 days or both a fine and imprisonment.

History: **En. Sec. 4, Ch. 275, L. 1965; amd. Sec. 7, Ch. 296, L. 1967; amd. Sec. 3, Ch. 450, L. 1975; R.C.M. 1947, 84-6604; amd. Sec. 2, Ch. 419, L. 1987; amd. Sec. 2, Ch. 238, L. 1989; amd. Sec. 14, Ch. 200, L. 1997.**

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-24-205. Sections limited to taxable trailers and manufactured homes. The provisions of this part apply only to those mobile homes, manufactured homes, and housetrailers, as defined in this part, subject to assessment and taxation under chapter 8, part 2, and 15-24-301.

History: **En. Sec. 5, Ch. 275, L. 1965; amd. Sec. 8, Ch. 296, L. 1967; R.C.M. 1947, 84-6605; amd. Sec. 15, Ch. 200, L. 1997.**

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-24-206. Declaration of destination on imported mobile homes and manufactured homes — display — tax receipt — exemptions. (1) A person who brings a mobile home or manufactured home into the state shall immediately upon arrival in the state execute a written declaration, verified under oath, stating the destination of the mobile home or manufactured home and any other information the department of revenue may require and shall deliver the original of the declaration to whomever is on duty at the nearest port of entry station, state vehicle weight station, or other place the department may prescribe. The person shall also immediately upon arrival in the state affix a copy of the declaration to the mobile home or manufactured home at a conspicuous place.

(2) The treasurer shall issue the mobile home or manufactured home movement declaration provided for in this section to a person required by this section to execute it, in quantities the person requests to a maximum of 100. The treasurer shall issue additional quantities of the declaration to a maximum of 100 as the person requests at the discretion of the county treasurer upon receipt from the person of the previously issued declarations properly executed. Executed declarations must be delivered to the treasurer within 30 days from their issue.

(3) A person who moves a mobile home or a manufactured home from a point within the state to another point within or outside of the state shall first:

(a) execute the declaration provided for in subsection (1), deliver the original of it to the treasurer of the county in which the move originates or to any other person the department prescribes, and affix a copy of it in a conspicuous place on the mobile home or manufactured home to be moved;

(b) obtain from the county treasurer of the county in which the move originates a receipt showing:

(i) payment in full of property taxes with respect to that mobile home or manufactured home; or

(ii) payment of the property taxes provided for in 15-24-209.

(4) The provisions of subsection (3)(b) do not apply whenever a person moves a mobile home or manufactured home:

(a) from a point outside of to a point within the state;

(b) between places of business of dealers within or outside of the state;

(c) from the place of business of a dealer to a point within or outside of the state; or

(d) pursuant to the repossession of a mobile home or manufactured home, unless the treasurer has furnished the lienholder or secured party with timely notice of the delinquent tax due when information has been requested under 15-24-202(2).

History: (1), (3), (4)En. Sec. 5, Ch. 296, L. 1967; amd. Sec. 250, Ch. 516, L. 1973; Sec. 84-6606, R.C.M. 1947; (2)En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R.C.M. 1921; Cal. Pol. C. Sec. 3821; amd. Sec. 2, Ch. 102, L. 1923; re-en. Sec. 2239, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963; amd. Sec. 83, Ch. 405, L. 1973; amd. Sec. 1, Ch. 162; amd. Sec. 1, Ch. 475, L. 1975; amd. Sec. 1, Ch. 105, L. 1977; Sec. 84-4202, R.C.M. 1947; R.C.M. 1947, 84-4202(5)(b), 84-6606; amd. Sec. 17, Ch. 581, L. 1979; amd. Sec. 2, Ch. 557, L. 1991; amd. Sec. 16, Ch. 200, L. 1997.

15-24-207. Department to make rules. The department of revenue may make reasonable rules necessary for or as an aid to effectuation of the purposes of this part.

History: En. Sec. 6, Ch. 296, L. 1967; amd. Sec. 251, Ch. 516, L. 1973; R.C.M. 1947, 84-6607.

15-24-208. Penalty for moving mobile home or manufactured home on which taxes due. Any person who moves a mobile home or manufactured home on which property taxes are unpaid is guilty of a misdemeanor.

History: En. 84-6608 by Sec. 1, Ch. 250, L. 1977; R.C.M. 1947, 84-6608; amd. Sec. 17, Ch. 200, L. 1997.

Cross-References

Misdemeanor penalty, 46-18-212.

15-24-209. Limit on delinquent mobile home or manufactured home taxes chargeable to security interest holder. The holder of a perfected security interest in a mobile home, manufactured home, or housetrailer who repossesses the mobile home, manufactured home, or housetrailer as provided by law and as authorized in the contract between the owner and the secured party may not be required to pay delinquent property taxes for more than 3 years as a condition of moving the mobile home, manufactured home, or housetrailer or transferring it to another person. Any additional delinquent taxes due upon the mobile home, manufactured home, or housetrailer are a lien upon any other personal or real property of the person who was required by law to pay the delinquent taxes at the time the taxes were due.

History: En. Sec. 3, Ch. 557, L. 1991; amd. Sec. 18, Ch. 200, L. 1997.

15-24-210. Notice of impending sale to certain lienholders. After entry of a notation under 15-16-115(2) concerning a mobile home or manufactured home that is not taxed as an improvement to real property but before directing the sheriff to make a levy and sale on the mobile home or manufactured home, the treasurer shall notify a person who has a properly perfected security interest in the mobile home or manufactured home and who has furnished the treasurer a copy of the instrument by which the interest was perfected of the levy and sale. The notice must state that the sheriff may soon be requested to make a levy and sale on the mobile home or manufactured home.

History: En. Sec. 4, Ch. 557, L. 1991; amd. Sec. 19, Ch. 200, L. 1997.

Part 3
Migratory Personal Property

15-24-301. *(Temporary)* **Personal property brought into the state — assessment — exceptions — custom combine equipment.** (1) Except as provided in subsections (2) through (5), property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) personal property, including livestock, brought into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) property that becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) This section may not be construed to levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer.

(4) Except as provided in 15-6-217, a motor vehicle subject to the registration fee imposed by 61-3-560 and 61-3-561 that is brought into this state by a nonresident person temporarily employed in Montana and used exclusively for transportation of that person is subject to registration fees as follows:

(a) The motor vehicle fee is imposed by the county in which it is located.

(b) One-fourth of the annual fee of the motor vehicle must be paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.

(c) The quarterly fees are due the first day of the quarter.

(5) Agricultural harvesting machinery classified under class eight, licensed in another state, and operated on the land of a person other than the owner of the machinery under a contract for hire is subject to a fee in lieu of tax of $35 for each machine for the calendar year in which the fee is collected. The machinery is subject to taxation under class eight only if the machinery is sold in Montana.

15-24-301. *(Effective January 1, 2003)* **Personal property brought into the state — assessment — exceptions — custom combine equipment.** (1) Except as provided in subsections (2) through (5), property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) personal property, excluding livestock, brought into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) property that becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) This section does not levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer.

(4) Except as provided in 15-6-217, a motor vehicle subject to the registration fee imposed by 61-3-560 and 61-3-561 that is brought into this state by a nonresident person temporarily employed in Montana and used exclusively for transportation of the person is subject to registration fees as follows:

(a) The motor vehicle fee is imposed by the county in which it is located.

(b) One-fourth of the annual fee of the motor vehicle must be paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.

(c) The quarterly fees are due the first day of the quarter.

(5) Agricultural harvesting machinery classified under class eight, licensed in another state, and operated on the land of a person other than the owner of the machinery under a contract for hire is subject to a fee in lieu of tax of $35 for each machine for the calendar year in which the fee is collected. The machinery is subject to taxation under class eight only if the machinery is sold in Montana.

History: En. Sec. 1, Ch. 41, L. 1953; amd. Sec. 4, Ch. 290, L. 1967; amd. Sec. 1, Ch. 370, L. 1974; amd. Sec. 65, Ch. 566, L. 1977; R.C.M. 1947, 84-6008; amd. Sec. 1, Ch. 603, L. 1979; amd. Sec. 21, Ch. 693, L. 1979; amd. Sec. 6, Ch. 598, L. 1981; amd. Sec. 4, Ch. 613, L. 1981; amd. Sec. 19, Ch. 614, L. 1981; amd. Sec. 1, Ch. 48, L. 1983; amd. Sec. 9, Ch. 516, L. 1985; amd. Sec. 10, Ch. 611, L. 1987; amd. Sec. 1, Ch. 246, L. 1999; amd. Sec. 16, Ch. 285, L. 1999; amd. Sec. 8, Ch. 515, L. 1999.

Compiler's Comments

2000 Amendment by Referendum: Chapter 515, L. 1999, at beginning of (4) after exception clause substituted "motor vehicle subject to the registration fee imposed by 61-3-560 and 61-3-561" for "motor vehicle not subject to a fee in lieu of tax" and near end substituted "registration fees" for "taxation and assessment for taxes"; in (4)(a) substituted "fee is imposed" for "is taxed"; in (4)(b) substituted "fee" for "tax liability"; in (4)(c) substituted "fees" for "taxes"; and made minor changes in style. Amendment effective November 7, 2000.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

Cross-References

Applicability to mobile homes and housetrailers, 15-24-205.
Registration of foreign motor vehicles, Title 61, ch. 3, part 7.
Transportation of vehicles through state, Title 61, ch. 4, part 3.
Custom combiner's fee in lieu of taxes required under this section, 61-10-130.
Liability for per capita assessment fee on sheep, 81-7-303.

15-24-302. Collection procedure. All property mentioned in 15-24-301 is assessed at the same value as property of like kind and character, and the assessment, levy, and collection of the tax are governed by the provisions of 15-8-408, 15-16-115, 15-16-119, 15-16-404, 15-17-911, and 15-24-202, except:

(1) the imposition of registration fees on motor vehicles under 15-24-301(4) to the extent that subsection varies from the general provisions cited in this section; and

(2) livestock taxation governed by 81-7-104 and Title 81, chapter 7, part 2.

History: En. Sec. 3, Ch. 41, L. 1953; amd. Sec. 7, Ch. 260, L. 1977; R.C.M. 1947, 84-6010; amd. Sec. 18, Ch. 581, L. 1979; amd. Sec. 9, Ch. 663, L. 1979; amd. Sec. 2, Ch. 159, L. 1981; amd. Sec. 2, Ch. 598, L. 1981; amd. Sec. 51, Ch. 587, L. 1987; amd. Sec. 106, Ch. 27, Sp. L. November 1993; amd. Sec. 9, Ch. 515, L. 1999.

Compiler's Comments

2000 Amendment by Referendum: Chapter 515, L. 1999, near end of introductory clause after citations deleted "as amended"; and at beginning of (1) substituted "the imposition of registration fees on" for "taxation of". Amendment effective November 7, 2000.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

15-24-303. *(Temporary)* **Proration of tax on personal property — refund.** (1) The tax on personal property brought, driven, coming into, or otherwise located in the state on or after the assessment date must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year. This section does not apply to motor vehicles taxed under Title 61, chapter 3, part 5, or to livestock for which a fee is imposed under 15-24-902(2).

(2) If property upon which taxes have been paid is removed from the state, the taxpayer may obtain a refund of a prorated portion of the taxes, subject to the requirements of 15-16-613.

15-24-303. *(Effective January 1, 2003)* **Proration of tax on personal property — refund.** (1) The tax on personal property brought, driven, coming into, or otherwise located in the state on or after the assessment date must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year. This section does not apply to motor vehicles taxed under Title 61, chapter 3, part 5, or to livestock subject to the per capita fee under 15-24-921.

(2) If property upon which taxes have been paid is removed from the state, the taxpayer may obtain a refund of a prorated portion of the taxes, subject to the requirements of 15-16-613.

History: En. Sec. 4, Ch. 41, L. 1953; amd. Sec. 8, Ch. 260, L. 1977; R.C.M. 1947, 84-6011; amd. Sec. 2, Ch. 615, L. 1989; amd. Sec. 2, Ch. 587, L. 1993; amd. Sec. 6, Ch. 576, L. 1995; amd. Sec. 17, Ch. 285, L. 1999; amd. Sec. 96, Ch. 574, L. 2001.

Compiler's Comments

2001 Amendment: (Temporary version) Chapter 574 in (1) in last sentence substituted "livestock for which a fee is imposed under 15-24-902(2)" for "livestock assessed under 15-24-902(2)". Amendment effective July 1, 2001.

(Version effective January 1, 2003) In (1) in last sentence substituted "per capita fee" for "per capita levy".

15-24-304. Prorated fee in lieu of tax — aircraft. (1) A person who acquires an aircraft required to be registered under subsections (2) through (6) of 67-3-201 after March 1 in any year shall register the aircraft within 30 days of acquiring it.

(2) The fee in lieu of tax must be prorated for aircraft registered for a period less than 1 year in the same manner as personal property taxes are prorated in 15-24-303.

(3) A person failing to register an aircraft within 30 days following acquisition of the aircraft or bringing the aircraft into the state for commercial purposes is subject to the penalty provided in 67-3-202.

(4) A person owning a migratory aircraft shall register as prescribed in 67-3-201(5) and pay the fee in lieu of tax.

History: En. 84-4218 by Sec. 3, Ch. 542, L. 1975; amd. Sec. 3, Ch. 210, L. 1977; R.C.M. 1947, 84-4218; amd. Sec. 1, Ch. 220, L. 1981; amd. Sec. 4, Ch. 157, L. 1983; amd. Sec. 7, Ch. 453, L. 1987.

15-24-305. Taxation of motion picture and television commercial property. Except as provided in 61-3-520, property used exclusively for filming motion pictures or television commercials and that remains in the state for a period exceeding 180 consecutive days in a calendar year is subject to assessment and taxation as all other property subject to property taxation.

History: En. Sec. 2, Ch. 525, L. 1989.

Cross-References

Exemption for motion picture and television commercial property, 15-6-215.

Taxation of vehicles used exclusively in filming motion pictures or television commercials, 61-3-520.

Part 4
Business Inventories
(Repealed)

15-24-401. Repealed. Sec. 35, Ch. 581, L. 1979.

History: En. 84-422.1 by Sec. 1, Ch. 182, L. 1977; R.C.M. 1947, 84-422.1.

15-24-402. Repealed. Sec. 6, Ch. 613, L. 1981.

History: En. 84-422.2 by Sec. 1, Ch. 255, L. 1977; R.C.M. 1947, 84-422.2.

15-24-403. Repealed. Sec. 6, Ch. 613, L. 1981.

History: En. 84-422.3 by Sec. 2, Ch. 255, L. 1977; R.C.M. 1947, 84-422.3.

Part 5
Banks
(Repealed. Sec. 17, Ch. 634, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

15-24-501. (1), (2)En. Sec. 6, Ch. 64, L. 1929; re-en. Sec. 2000.6, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1957; amd. Sec. 1, Ch. 516, L. 1973; amd. Sec. 3, Ch. 341, L. 1975; Sec. 84-308, R.C.M. 1947; (3)En. Sec. 2, Ch. 64, L. 1929; re-en. Sec. 2000.2, R.C.M. 1935; (4)En. Sec. 3, Ch. 64, L. 1929; re-en. Sec. 2000.3, R.C.M. 1935; Sec. 84-305, R.C.M. 1947; R.C.M. 1947, 84-304, 84-305, 84-308.

15-24-502. En. Sec. 1, Ch. 81, L. 1921; re-en. Sec. 2064, R.C.M. 1921; re-en. Sec. 2064, R.C.M. 1935; R.C.M. 1947, 84-4602.

15-24-503. En. Sec. 2, Ch. 81, L. 1921; re-en. Sec. 2065, R.C.M. 1921; re-en. Sec. 2065, R.C.M. 1935; R.C.M. 1947, 84-4603.

15-24-504. En. Sec. 3, Ch. 81, L. 1921; re-en. Sec. 2066, R.C.M. 1921; re-en. Sec. 2066, R.C.M. 1935; amd. Sec. 86, Ch. 405, L. 1973; amd. Sec. 16, Ch. 388, L. 1975; R.C.M. 1947, 84-4604.

15-24-505. En. Sec. 4, Ch. 81, L. 1921; re-en. Sec. 2067, R.C.M. 1921; amd. Sec. 1, Ch. 64, L. 1927; re-en. Sec. 2067, R.C.M. 1935; amd. Sec. 87, Ch. 405, L. 1973; amd. Sec. 17, Ch. 388, L. 1975; amd. Sec. 55, Ch. 566, L. 1977; R.C.M. 1947, 84-4605.

15-24-506. En. Sec. 1, Ch. 72, L. 1967; amd. Sec. 88, Ch. 405, L. 1973; amd. Sec. 18, Ch. 388, L. 1975; R.C.M. 1947, 84-4606.

15-24-507. En. Sec. 9, p. 76, L. 1891; re-en. Sec. 3694, Pol. C. 1895; re-en. Sec. 2506, Rev. C. 1907; re-en. Sec. 2063, R.C.M. 1921; re-en. Sec. 2063, R.C.M. 1935; R.C.M. 1947, 84-4601.

15-24-508. En. Sec. 5, Ch. 64, L. 1929; re-en. Sec. 2000.5, R.C.M. 1935; amd. Sec. 2, Ch. 25, L. 1971; amd. Sec. 1, Ch. 501, L. 1977; R.C.M. 1947, 84-307.

Part 6
Insurance Companies

15-24-601. Assessment and taxation of insurance companies. Every insurance company organized under the laws of the state shall be assessed and taxed upon its real estate and personal property at the same rate and in the same manner as other property is assessed and taxed in this state.

History: En. Sec. 1, Ch. 64, L. 1915; re-en. Sec. 2111, R.C.M. 1921; re-en. Sec. 2111, R.C.M. 1935; R.C.M. 1947, 84-5101.

15-24-602. Determining insurance company taxable property. In computing the taxable property of insurance companies organized under the laws of Montana, there must be deducted:

(1) the value of the real property on which the company pays taxes, if the real estate is assessed to the company as other real estate;

(2) the legal reserve required by the laws of Montana or by the insurance department of Montana for the protection of policyholders;

(3) all assets not admitted as such by the state or by the insurance department of Montana;

(4) debts and liabilities that are due or owing by the company; and

(5) the value of a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105.

History: En. Sec. 2, Ch. 64, L. 1915; re-en. Sec. 2112, R.C.M. 1921; re-en. Sec. 2112, R.C.M. 1935; R.C.M. 1947, 84-5102; amd. Sec. 2, Ch. 617, L. 1989; amd. Sec. 28, Ch. 51, L. 1999.

15-24-603. Repealed. Sec. 17, Ch. 634, L. 1979.

History: En. Sec. 1, Ch. 63, L. 1929; re-en. Sec. 2112.1, R.C.M. 1935; amd. Sec. 59, Ch. 566, L. 1977; R.C.M. 1947, 84-5103.

Part 7
Production Credit Associations

15-24-701. Production credit associations — assessment and payment. Every production credit association organized under the provisions of section 1131d of Title 12, United States Codes Annotated, shall be assessed for and pay taxes upon all real and personal property owned by such association.

History: En. Sec. 1, Ch. 35, L. 1951; amd. Sec. 113, Ch. 405, L. 1973; amd. Sec. 19, Ch. 388, L. 1975; R.C.M. 1947, 84-5801; amd. Sec. 12, Ch. 634, L. 1979.

Part 8
Building and Loan Associations

15-24-801. Savings and loan associations — taxation. Every savings and loan association subject to regulation under Title 32, chapter 2, must be assessed for and pay taxes upon all real and personal property owned by the association. The secretary of an association shall furnish to the department, within 5 days after demand, a condensed statement, verified by oath, of the resources and liabilities of the association as disclosed by its books at noon on January 1 in each year. If the secretary fails to make the statement, the department shall immediately obtain the information from any other available source, and for this purpose it shall have access to the books of the association. The department shall make an assessment of the real estate and personal property owned by the association in a manner that is as fair and equitable as it may be able to make from the best information available, or the department may, for the purpose of the assessment, adopt the figures disclosed by any prior report made by the association to any state or federal officer under a state or federal law. A person required by this section to make the statement provided for in this section who fails to furnish it is guilty of a misdemeanor.

History: En. Sec. 20, Ch. 57, L. 1927; amd. Sec. 1, Ch. 62, L. 1929; re-en. Sec. 6355.21, R.C.M. 1935; amd. Sec. 2, Ch. 391, L. 1973; amd. Sec. 1, Ch. 388, L. 1975; Sec. 7-122, R.C.M. 1947; amd. and redes. 84-7001 by Sec. 76, Ch. 431, L. 1975; R.C.M. 1947, 84-7601; amd. Sec. 13, Ch. 634, L. 1979; amd. Sec. 107, Ch. 27, Sp. L. November 1993.

Cross-References

Misdemeanor penalty, 46-18-212.

Part 9
Livestock

Part Cross-References

Exemption for livestock less than 9 months of age and swine less than 3 months of age, 15-6-207.
Levy on cattle — Livestock Protection Committee, 81-6-104.
Levy on cattle — cattle protective districts, 81-6-204, 81-6-209.
State levy on livestock for predator control, 81-7-103, 81-7-104.
County levy on livestock for predator control, 81-7-201.
County levy for sheep predator control, 81-7-303.
County levy for livestock shows and sales, 81-8-504.

15-24-901. *(Temporary)* **Definition.** As used in this part, "livestock" includes those animals defined as livestock in 15-1-101. *(Repealed effective January 1, 2003—secs. 27, 31, Ch. 285, L. 1999.)*

History: En. 84-5201.3 by Sec. 1, Ch. 260, L. 1977; R.C.M. 1947, 84-5201.3; amd. Sec. 4, Ch. 570, L. 1985; amd. Sec. 45, Ch. 370, L. 1987; amd. Sec. 108, Ch. 27, Sp. L. November 1993.

15-24-902. *(Temporary)* **Number of livestock.** (1) Except as provided in subsection (2), the department of revenue shall determine the number of all nonexempt livestock in each county where they are located on February 1 of each year. The livestock must be assigned to the person by whom they were owned or claimed or in whose possession or control they were at midnight of February 1 in that year.

(2) An owner of livestock may elect to have a fee imposed on nonexempt livestock on the average inventory basis as provided in 15-24-927. The owner shall file an election with the department on the statement required under 15-24-903. An owner of livestock making an election to have a fee imposed on nonexempt livestock on the average inventory basis is bound by that election for 6 years. After 6 years, the election to have a fee imposed on nonexempt livestock on the average inventory basis remains in effect unless the owner otherwise notifies the department before February 1.

15-24-902. *(Effective January 1, 2003)* **Number of livestock.** The department shall determine the number of livestock for the purposes of the per capita fee imposed under 15-24-921 in each county where they are located on February 1 of each year. The livestock must be assigned to the person by whom they were owned or claimed or in whose possession or control they were at midnight of February 1 in that year.

History: En. Sec. 3720, Pol. C. 1895; re-en. Sec. 2530, Rev. C. 1907; re-en. Sec. 2068, R.C.M. 1921; re-en. Sec. 2068, R.C.M. 1935; R.C.M. 1947, 84-5201; amd. Sec. 8, Ch. 598, L. 1989; amd. Sec. 109, Ch. 27, Sp. L. November 1993; amd. Sec. 1, Ch. 576, L. 1995; amd. Sec. 18, Ch. 285, L. 1999; amd. Sec. 97, Ch. 574, L. 2001.

Compiler's Comments

2001 Amendment: (Temporary version) Chapter 574 in (1) in first sentence substituted "determine the number of" for "assess" and in second sentence substituted "assigned" for "assessed"; and in (2) in three places substituted "have a fee imposed on nonexempt livestock" for "have nonexempt livestock assessed". Amendment effective July 1, 2001.

(Version effective January 1, 2003) In first sentence substituted "determine the number of" for "assess" and substituted "per capita fee" for "per capita levy" and in second sentence substituted "assigned" for "assessed".

Cross-References

Roundup of horses that have escaped assessment, Title 81, ch. 4, part 5.

15-24-903. *(Temporary)* **Duty of owner to assist in assessment.** (1) (a) Except as provided in subsection (1)(b), the owner of livestock, as defined in 15-24-901, or the owner's agent shall at the time of assessment make and deliver to the department of revenue for the county or counties where the owner's livestock were located on February 1 a written statement, under oath, listing the owner's different kinds of livestock within the county or counties, together with a listing of their marks and brands.

(b) If the owner of livestock is assessed on the average inventory basis, as provided in 15-24-927, the owner or the owner's agent shall, in the manner and timeframe provided in subsection (1)(a), report to the department the county or counties where the livestock were located in the prior tax year and show the months during the prior tax year that the livestock were within the county or counties.

(2) As used in this section, "agent" means any person, persons, company, or corporation, including a feedlot operator or owner of grazing land, who has charge of livestock on the assessment date.

15-24-903. *(Effective January 1, 2003)* **Duty of owner to assist in assessment.** (1) The owner of livestock, as defined in 15-24-921, or the owner's agent shall at the time of assessment make and deliver to the department for the county or counties where the owner's livestock were located on February 1 a written statement, under oath, listing the owner's different kinds of livestock within the county or counties, together with a listing of their marks and brands.

(2) As used in this section, "agent" means any person, persons, company, or corporation, including a feedlot operator or owner of grazing land, who has charge of livestock on the assessment date.

History: En. 84-5201.1 by Sec. 4, Ch. 507, L. 1975; amd. Sec. 6, Ch. 260, L. 1977; R.C.M. 1947, 84-5201.1; amd. Sec. 2, Ch. 663, L. 1979; amd. Sec. 9, Ch. 598, L. 1989; amd. Sec. 110, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 576, L. 1995; amd. Sec. 19, Ch. 285, L. 1999.

15-24-904. *(Temporary)* **Penalty for violation of law.** If any person, company, or corporation who is the owner or is in charge of any livestock within this state fails to make the statement or statements as provided in 15-24-903, the department shall, after 10 days' notice to the person who failed to file the report, assess the penalty provided in 15-8-309.

15-24-904. *(Effective January 1, 2003)* **Penalty for violation of law.** If a person, company, or corporation who is the owner or is in charge of livestock within this state fails to make the statement or statements as provided in 15-24-903, the department shall, after 10 days' notice to the person who failed to file the report, access the penalty provided in 15-8-309 on the per capita fee, as provided in 15-24-921.

History: En. Sec. 7, Ch. 125, L. 1909; re-en. Sec. 2075, R.C.M. 1921; re-en. Sec. 2075, R.C.M. 1935; amd. Sec. 5, Ch. 507, L. 1975; R.C.M. 1947, 84-5208; amd. Sec. 3, Ch. 663, L. 1979; amd. Sec. 111, Ch. 27, Sp. L. November 1993; amd. Sec. 20, Ch. 285, L. 1999; amd. Sec. 5, Ch. 427, L. 1999; amd. Sec. 19, Ch. 7, L. 2001; amd. Sec. 98, Ch. 574, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: (Version effective January 1, 2003) Chapter 7 near end after "15-8-309" substituted "on the" for "[on the]". Amendment effective October 1, 2001.

(Version effective January 1, 2003) Chapter 574 near end substituted "per capita fee" for "per capita levy"; and made minor changes in style.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-24-905. Livestock brought into state — notice to department. The owner or the agent, manager, or supervisor of any person, corporation, or association bringing livestock into this state after February 1 shall immediately after the livestock cross the state line forward to the department a certified letter, containing the name of the owner of the livestock, the number of livestock, the brand on the livestock, the ages of the livestock, the time and place at which the livestock were brought across the state line, and the county or counties into which the livestock are moved. The department of livestock shall at least once each month furnish from its own records to the department a list of the number and kind of livestock moved into each county, together with the name of the owner of the livestock.

History: En. Sec. 5, Ch. 41, L. 1953; amd. Sec. 114, Ch. 405, L. 1973; amd. Sec. 20, Ch. 388, L. 1975; R.C.M. 1947, 84-6012; amd. Sec. 7, Ch. 663, L. 1979; amd. Sec. 10, Ch. 598, L. 1989; amd. Sec. 112, Ch. 27, Sp. L. November 1993.

15-24-906. Collection of tax on livestock. The department, upon receipt of the letter provided for in 15-24-905 or other information that livestock has been brought into a county from outside of the state after February 1 in any year, shall immediately proceed under the provisions of this part.

History: En. Sec. 6, Ch. 41, L. 1953; amd. Sec. 115, Ch. 405, L. 1973; amd. Sec. 21, Ch. 388, L. 1975; amd. Sec. 9, Ch. 260, L. 1977; R.C.M. 1947, 84-6013; amd. Sec. 113, Ch. 27, Sp. L. November 1993.

15-24-907. Repealed. Sec. 15, Ch. 663, L. 1979.

History: En. Sec. 7, Ch. 41, L. 1953; amd. Sec. 116, Ch. 405, L. 1973; amd. Sec. 10, Ch. 260, L. 1977; R.C.M. 1947, 84-6014.

15-24-908 through 15-24-911. Repealed. Sec. 11, Ch. 598, L. 1989.

Compiler's Comments

Histories of Repealed Sections:

15-24-908. En. 84-5201.4 by Sec. 2, Ch. 260, L. 1977; R.C.M. 1947, 84-5201.4; amd. Sec. 11, Ch. 663, L. 1979.
15-24-909. En. 84-5201.5 by Sec. 3, Ch. 260, L. 1977; R.C.M. 1947, 84-5201.5; amd. Sec. 12, Ch. 663, L. 1979.
15-24-910. En. 84-5201.6 by Sec. 4, Ch. 260, L. 1977; R.C.M. 1947, 84-5201.6; amd. Sec. 13, Ch. 663, L. 1979.
15-24-911. En. Sec. 10, Ch. 663, L. 1979; amd. Sec. 7, Ch. 20, L. 1985.

15-24-912 through 15-24-919 reserved.

15-24-920. *(Temporary)* **Election for proration of tax on livestock — refunds — additional assessment.** (1) An owner of livestock who moves the livestock interstate may elect to have the nonexempt livestock taxed on a prorated basis.

(2) The owner shall file an election with the department on the statement required in 15-24-903. The statement must indicate the number of months the owner's livestock will be in the state.

(3) If a livestock owner elects to be taxed on a prorated basis, the tax on livestock that are moved interstate must be prorated according to the ratio of the number of months the livestock have taxable situs in the county to the total number of months in the taxable year. Livestock must be prorated as provided in this section regardless of when the livestock gain taxable situs in the county during the taxable year.

(4) Subject to the provisions of 15-16-603 through 15-16-605, a taxpayer whose nonexempt livestock are assessed under subsection (3) for a period longer than the actual number of months that the livestock have taxable situs in the state is entitled to a refund. The amount of the refund is equal to the difference between the original prorated amount paid and the subsequent amount owed after the actual number of tax situs months are determined at the end of the tax year. A taxpayer shall apply for a refund allowed under this subsection by January 31 following the year of assessment. The application must include a statement showing the date when the livestock were moved out of the state.

(5) A taxpayer whose nonexempt livestock are assessed under subsection (3) for a period shorter than the actual number of months that the livestock have taxable situs is subject to additional taxes for the number of additional months that the livestock has taxable situs in the state.

(6) A taxpayer whose livestock are assessed under 15-24-902(2) is not entitled to a refund under this part. *(Repealed effective January 1, 2003—secs. 27, 31, Ch. 285, L. 1999.)*

History: En. Sec. 1, Ch. 627, L. 1991; amd. Sec. 7, Ch. 539, L. 1993; amd. Sec. 114, Ch. 27, Sp. L. November 1993; amd. Sec. 7, Ch. 576, L. 1995.

15-24-921. Per capita fee to pay expenses of enforcing livestock laws. (1) In addition to appropriations made for those purposes, a per capita fee is authorized and directed to be imposed by the department on all poultry and bees, all swine 3 months of age or older, and all other livestock 9 months of age or older in each county of this state for the purpose of aiding in the payment of the salaries and all expenses connected with the enforcement of the livestock laws of the state and for the payment of bounties on wild animals as provided in 81-7-104.

(2) As used in this section, "livestock" means cattle, sheep, swine, poultry, bees, goats, horses, mules, asses, llamas, alpacas, domestic bison, ostriches, rheas, and emus, and domestic ungulates.

History: En. Sec. 1, Ch. 127, L. 1915; re-en. Sec. 2076, R.C.M. 1921; re-en. Sec. 2076, R.C.M. 1935; R.C.M. 1947, 84-5209; amd. Sec. 3, Ch. 660, L. 1987; amd. Sec. 2, Ch. 627, L. 1991; amd. Sec. 2, Ch. 417, L. 1993; amd. Sec. 115, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 206, L. 1995; amd. Sec. 99, Ch. 574, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 574 in (1) near beginning substituted "per capita fee is authorized and directed to be imposed" for "per capita tax is authorized and directed to be levied". Amendment effective July 1, 2001.

15-24-922. *(Temporary)* **Board of livestock to prescribe per capita fee — refunds — per capita fee on average inventory.** (1) The board of livestock shall annually prescribe the amount of the per capita fee to be made against livestock of all classes for the purpose indicated in 15-24-921.

(2) The per capita fee must be calculated each year to provide not more than 110% of the average annual revenue that was generated in the 3 previous years. The calculation must apply

a reasonable factor for nonpayment and late payment of fees and for reimbursement to the department pursuant to 15-24-925 for collection of the fee.

(3) (a) A livestock owner taxed under 15-24-920 is entitled to a refund of the per capita fee collected under 15-24-921 based on the number of months the livestock have taxable situs in the state. The amount of the refund is equal to the ratio of the number of months that the livestock do not have taxable situs in the state to the number of months in the tax year, multiplied by the original per capita fee due. A taxpayer shall apply to the board of livestock on a form prescribed by the board for a refund allowed under this subsection by January 31 following the tax year. The application must include a statement showing the date when the livestock were moved out of the state.

(b) Except as provided in subsection (3)(c), for the purposes of 15-24-921 and this section, the per capita fee may not be prorated.

(c) A taxpayer whose livestock are taxed on the average inventory basis for property tax purposes must also be subject to the fee on an average inventory basis for the purposes of 15-24-921 and this section. All other livestock subject to the per capita fee must be reported on February 1 of each year.

15-24-922. *(Effective January 1, 2003)* **Board of livestock to prescribe per capita fee — refunds.** (1) The board of livestock shall annually prescribe the amount of the per capita fee to be made against livestock of all classes for the purpose indicated in 15-24-921.

(2) The per capita fee must be calculated each year to provide not more than 110% of the average annual revenue that was generated in the 3 previous years. The calculation must apply a reasonable factor for nonpayment and late payment of fees and for reimbursement to the department pursuant to 15-24-925 for collection of the fee.

(3) (a) A livestock owner who moves livestock between states is entitled to a refund of the per capita fee collected under 15-24-921 based on the number of months that the livestock have situs in Montana. The amount of the refund is equal to the ratio of the number of months that the livestock do not have situs in the state to the number of months in the year, multiplied by the original per capita fee due. A taxpayer shall apply to the board of livestock on a form prescribed by the board for a refund allowed under this subsection by January 31 of the following year. The application must include a statement showing the date when the livestock were moved out of the state.

(b) For the purposes of 15-24-921 and this section, the per capita fee may not be prorated.

History: En. Sec. 2, Ch. 127, L. 1915; re-en. Sec. 2077, R.C.M. 1921; re-en. Sec. 2077, R.C.M. 1935; amd. Sec. 194, Ch. 516, L. 1973; R.C.M. 1947, 84-5210; amd. Sec. 10, Ch. 79, L. 1983; amd. Sec. 4, Ch. 660, L. 1987; amd. Sec. 3, Ch. 627, L. 1991; amd. Sec. 4, Ch. 576, L. 1995; amd. Sec. 21, Ch. 285, L. 1999; amd. Sec. 100, Ch. 574, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 574 throughout section substituted references to fee for references to levy and tax; in (2) near middle of second sentence substituted "department" for "counties"; and made minor changes in style. Amendment effective July 1, 2001.

15-24-923. Repealed. Sec. 12, Ch. 660, L. 1987.

History: En. Sec. 3, Ch. 127, L. 1915; re-en. Sec. 2078, R.C.M. 1921; amd. Sec. 1, Ch. 152, L. 1929; re-en. Sec. 2078, R.C.M. 1935; amd. Sec. 109, Ch. 147, L. 1963; amd. Sec. 1, Ch. 422, L. 1975; amd. Sec. 1, Ch. 120, L. 1977; amd. Sec. 60, Ch. 566, L. 1977; R.C.M. 1947, 84-5211; amd. Sec. 1, Ch. 445, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

15-24-924. Repealed. Sec. 12, Ch. 660, L. 1987.

History: En. Sec. 4, Ch. 127, L. 1915; re-en. Sec. 2079, R.C.M. 1921; re-en. Sec. 2079, R.C.M. 1935; amd. Sec. 89, Ch. 147, L. 1963; amd. Sec. 2, Ch. 422, L. 1975; amd. Sec. 2, Ch. 120, L. 1977; R.C.M. 1947, 84-5212; amd. Sec. 1, Ch. 277, L. 1983.

15-24-925. Reimbursement to department — transmission of fees to state. (1) The department may withhold 2% of the money received under 15-24-921 as reimbursement for the collection of the fee on livestock.

(2) The department shall designate the amount received from the fee imposed on sheep and the amount received from the fee imposed on all other livestock and shall specify the separate amounts in the report to the department of livestock. The money, when received by the department, must be deposited in an account in the special revenue fund to the credit of the

department of livestock. The money in the account must be kept separate from other funds received by the department of livestock.

History: En. Sec. 5, Ch. 127, L. 1915; re-en. Sec. 2080, R.C.M. 1921; re-en. Sec. 2080, R.C.M. 1935; R.C.M. 1947, 84-5213; amd. Sec. 1, Ch. 100, L. 1983; amd. Sec. 3, Ch. 444, L. 1983; amd. Sec. 5, Ch. 660, L. 1987; amd. Sec. 4, Ch. 509, L. 1995; amd. Sec. 7, Ch. 257, L. 2001; amd. Sec. 101, Ch. 574, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 257 throughout section substituted references to department (of revenue) for references to state treasurer. Amendment effective July 1, 2001.

Chapter 574 in (1) near beginning substituted "department" for "county treasurer", after "reimbursement" deleted "to the county", and near end substituted "fee" for "levy"; and in (2) deleted former first sentence that read: "Except for the amount withheld under subsection (1), the taxes levied and the money collected pursuant to the provisions of 15-24-922 must be transmitted to the state treasury by the county treasurer of each county, as provided in 15-1-504, but not later than July 1 following assessment", in first sentence near beginning substituted "department" for "county treasurer", in two places substituted "fee imposed" for "tax levied", and at end substituted "department of livestock" for "state treasurer", and in second sentence substituted "department" for "state treasurer". Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

15-24-926. *(Temporary)* **Livestock reserve fund.** (1) The county treasurer may, at the discretion of the county governing body, deposit up to 5% of the property tax collected each year on livestock or each year on a prorated basis as provided in 15-24-920 in a livestock reserve fund.

(2) Refunds for overpayment of property tax on livestock must be issued from this fund.

(3) When the amount in a livestock reserve fund exceeds 10% of the total property tax collected in a year on livestock or each year on a prorated basis as provided in 15-24-920, the excess funds must be transferred to the county general fund and included in the next year's county budget. *(Repealed effective January 1, 2003—secs. 27, 31, Ch. 285, L. 1999.)*

History: En. Sec. 14, Ch. 663, L. 1979; amd. Sec. 4, Ch. 627, L. 1991.

15-24-927. *(Temporary)* **Average inventory — computation of estimated value of livestock.** (1) If the owner's livestock are assessed on the average inventory basis, the estimated value of livestock in a county on assessment day is computed by adding the assessed value of all livestock more than 24 months of age owned by the taxpayer in the county on the last day of each month of the prior tax year and dividing the sum by 12.

(2) The taxpayer shall file a statement on or before February 1 setting forth the number of all livestock more than 24 months of age owned by the taxpayer in each county on the last day of each month during the prior tax year. *(Repealed effective January 1, 2003—secs. 27, 31, Ch. 285, L. 1999.)*

History: En. Sec. 3, Ch. 576, L. 1995.

15-24-928 through 15-24-930 reserved.

15-24-931. *(Temporary)* **Assessment of swine.** (1) Each swine producer shall submit a statement in the manner prescribed by the department of revenue showing the number of pigs owned in each of the following classes as of January 1:

(a) market hogs, which are hogs between 3 months and 6 months of age and which have a conclusively presumed weight factor of 150 pounds;

(b) breeding sows, which have a conclusively presumed weight factor of 300 pounds;

(c) breeding boars, which have a conclusively presumed weight factor of 300 pounds.

(2) The department shall determine market value of swine by multiplying the following average USDA Omaha quotation price over the preceding 5 years, less $2 per hundred in the case of market hogs and breeding sows, times the conclusively presumed weight of each pig in the class:

(a) market hogs—USDA Omaha quotation for barrows and gilts, grades 1 to 3, at 230 to 240 pounds;

(b) breeding sows—USDA Omaha quotation for sows, grades 1 to 2, at 300 to 350 pounds;

(c) breeding boars—valued the same as market hogs.

(3) The department shall apply the same equalization factor to swine as to other classes of livestock.

(4) The department shall publish the most recent 5-year average USDA Omaha quotation price for each class in the Administrative Rules of Montana. *(Repealed effective January 1, 2003—secs. 27, 31, Ch. 285, L. 1999.)*

History: En. 84-5222 by Sec. 1, Ch. 393, L. 1977; R.C.M. 1947, 84-5222; amd. Sec. 68, Ch. 575, L. 1981.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Swine less than 3 months of age exempt, 15-6-207.

15-24-932 through 15-24-940 reserved.

15-24-941. Repealed. Sec. 11, Ch. 598, L. 1989.

History: En. Sec. 4, Ch. 663, L. 1979.

15-24-942. Repealed. Sec. 11, Ch. 598, L. 1989.

History: En. Sec. 5, Ch. 663, L. 1979.

15-24-943. Repealed. Sec. 11, Ch. 598, L. 1989.

History: En. Sec. 6, Ch. 663, L. 1979.

Part 10
Custom Combines (Renumbered)

15-24-1001. Renumbered 61-10-130. Sec. 3, Ch. 183, L. 1989.

Part 11
Leasehold and Other Interests in U.S. Property

Part Cross-References

Exemption of United States property, 15-6-201.

15-24-1101. Federal property held under contract by private person subject to taxation. Real and/or personal property of the United States or any department or agency thereof held under contract of sale, lease, or other interest or estate therein by any person for his exclusive use shall be subject to assessment for ad valorem property taxation as provided in this part; provided that this part shall not apply to real property held and in immediate use and occupation by this state or any county, municipal corporation, or political subdivision therein.

History: En. Sec. 1, Ch. 212, L. 1951; R.C.M. 1947, 84-6101.

15-24-1102. Federal property held under contract of sale. When the property is held under a contract of sale or other agreement whereby upon payment the legal title is or may be acquired by the person, the real property shall be assessed and taxed as defined in Title 15, chapter 6, part 1, and 15-8-111 without deduction on account of the whole or any part of the purchase price or other sum due on the property remaining unpaid. The lien for the tax may not attach to, impair, or be enforced against any interest of the United States in the real property.

History: En. Sec. 2, Ch. 212, L. 1951; amd. Sec. 66, Ch. 566, L. 1977; R.C.M. 1947, 84-6102; amd. Sec. 22, Ch. 693, L. 1979; amd. Sec. 46, Ch. 370, L. 1987; amd. Sec. 7, Ch. 10, Sp. L. June 1989.

15-24-1103. Federal property held under lease. When the property is held under lease, other interest, or estate therein that is less than the fee, except under contract of sale, the property must be assessed and taxed for the value, as defined in Title 15, chapter 6, part 1, of the leasehold, interest, or estate in the property. The lien for the tax must attach to and be enforced against only the leasehold, interest, or estate in the property. Whenever the interest in the property is acquired through foreclosure, the lessor is liable for property taxes. When the United States authorizes the taxation of the property for the full assessed value of the fee, the property must be assessed for full assessed value as defined in 15-8-111.

History: En. Sec. 3, Ch. 212, L. 1951; amd. Sec. 67, Ch. 566, L. 1977; R.C.M. 1947, 84-6103; amd. Sec. 23, Ch. 693, L. 1979; amd. Sec. 47, Ch. 370, L. 1987; amd. Sec. 8, Ch. 10, Sp. L. June 1989; amd. Sec. 2, Ch. 80, L. 1993.

15-24-1104. Collection of taxes on interests in United States lands. In addition to all other remedies available for the collection of taxes, all taxes levied in any year against property held as under the provisions of this part shall be a debt due and owing from the person so holding such property as of the date of delinquency for taxes on property for such tax year. If any such tax be not paid within 1 year from such date, the county within which such property is located may institute for itself, the state of Montana, and all other municipal corporations sharing in such taxes an action for the collection of said taxes, together with interest, costs, and other lawful charges thereon. At the time of commencement of such action, the county shall have the benefit of all laws of this state pertaining to provisional remedies against the properties, either real or personal, of said person.

History: **En. Sec. 4, Ch. 212, L. 1951; R.C.M. 1947, 84-6104.**

Cross-References

Collection of taxes by suit, Title 15, ch. 24, part 11.

Part 12

State and Other Exempt Property

Part Cross-References

Exemption of state and municipal property, 15-6-201.

15-24-1201. State and other exempt property held under contract — when taxable. Property of the state of Montana or any department, agency, or subdivision thereof or any other property not subject to ad valorem tax to the owner thereof by reason of the legal status of the owner, held under contract of sale or lease with option to purchase with lease moneys applicable to purchase price by any person for his exclusive use, shall be subject to assessment to purchaser or lessee for ad valorem property taxation.

History: **En. Sec. 1, Ch. 39, L. 1965; R.C.M. 1947, 84-204.**

15-24-1202. Taxable interests in state and other exempt property — assessment. When such property is held under a contract of sale or other agreement whereby on certain payment or payments the legal title is or may be acquired by such person, such property shall be assessed to such person and taxed without deduction on account of the whole or any part of the purchase price or other sum due on such property remaining unpaid, provided that the lien for such tax neither attach to, impair, nor be enforced against any interest of the state of Montana or any department, agency, or subdivision thereof.

History: **En. Sec. 2, Ch. 39, L. 1965; R.C.M. 1947, 84-205.**

15-24-1203. Privilege tax on industrial, trade, or other business use of tax-exempt property — exceptions. (1) There is imposed and must be collected a tax upon the possession or other beneficial use for industrial, trade, or other business purposes enjoyed by any private individual, association, or corporation of any property, real or personal, that for any reason is exempt from taxation. The tax is imposed upon the possession or other beneficial use of an electric transmission line and associated facilities, except that lines and facilities of a design capacity of less than 500 kilovolts are not subject to the tax.

(2) The tax may not be imposed upon:

(a) the possession or other beneficial use of railroad right-of-way or track owned by the United States or acquired by the state pursuant to Title 60, chapter 11, part 1, as long as the state or the United States retains ownership and the right-of-way or track is used exclusively for rail transportation;

(b) the beneficial use by a person of property held by a port authority, created under Title 7, chapter 14, part 11, or by a port authority owned by the United States or an agency of the United States unless the port authority provides for the exclusive use of the property by the person;

(c) the possession or other beneficial use of public lands occupied under the terms of recreational, mineral, timber, or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates; or

(d) the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on public airport property are subject to taxation.

History: En. Sec. 1, Ch. 370, L. 1969; amd. Sec. 1, Ch. 387, L. 1977; R.C.M. 1947, 84-207; amd. Sec. 3, Ch. 683, L. 1983; amd. Sec. 2, Ch. 591, L. 1987; amd. Sec. 12, Ch. 83, L. 1989; amd. Sec. 1, Ch. 621, L. 1991; amd. Sec. 1, Ch. 104, L. 1993; amd. Sec. 1, Ch. 427, L. 1993; amd. Sec. 2, Ch. 49, L. 1997.

15-24-1204. Rate of privilege — tax credit for federal payments in lieu of taxes. The tax imposed upon the possession or other beneficial use of tax-exempt property for industrial, trade, or other business purposes is on the separate private interest in the tax-exempt property. The amount of payments that are made in lieu of taxes must be credited against the amount of tax that is imposed upon the beneficial use of property owned by the federal government.

History: En. Sec. 2, Ch. 370, L. 1969; R.C.M. 1947, 84-208; amd. Sec. 2, Ch. 104, L. 1993; amd. Sec. 1, Ch. 256, L. 1993; amd. Sec. 2, Ch. 427, L. 1993.

Cross-References

Federal sums in lieu of taxes, Title 17, ch. 3, part 3.

15-24-1205. Privilege tax — assessment and collection — no lien. The tax imposed hereunder shall be assessed to such possessors or users of the tax-exempt property upon the same forms and shall be collected and distributed at the same time and in the same manner as taxes assessed to owners, possessors, or other claimants of property which is subject to ad valorem taxation, except that such taxes shall not become a lien against the property and no such tax-exempt property may be attached, encumbered, sold, or otherwise affected for the collection of the tax imposed hereunder.

History: En. Sec. 3, Ch. 370, L. 1969; R.C.M. 1947, 84-209.

15-24-1206. County suit for delinquent privilege tax. A tax due and unpaid under 15-24-1203 through 15-24-1205 shall constitute a debt due the county for and on behalf of the various taxing units concerned in the tax. If the tax imposed by 15-24-1203 through 15-24-1205 or any portion thereof is not paid at the time the same becomes delinquent, the county auditor may issue a warrant in the name of the county directed to the clerk of the district court in his county, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent taxpayer mentioned in the warrant and, in the appropriate columns, the amount of tax, penalties, interest, and other costs for which the warrant is issued and the date when such warrant is filed, and thereupon the warrant so docketed shall have the force and effect of a judgment duly rendered by a district court and docketed in the office of the clerk thereof and the county shall have the same remedies against the possessor user as any other judgment docket.

History: En. Sec. 4, Ch. 370, L. 1969; R.C.M. 1947, 84-210.

15-24-1207. Reporting requirements — penalty — rules. (1) Each private person who is a possessor or a beneficial user of tax-exempt property for industrial, trade, or other business purposes subject to tax pursuant to 15-24-1203 shall, on or before March 1 each year, file with the department a statement of the possession or other beneficial use of tax-exempt property in the preceding calendar year and the value of the property. The statement must be in the form prescribed by the department and must be verified by the possessor or beneficial user or, in the case of an association or corporation, by an officer of the association or corporation. The statement must include:

(a) the name and address of the person, association, or corporation;

(b) the location of the tax-exempt property; and

(c) the market value in dollars and cents of the tax-exempt property.

(2) A person who fails to file the statement required by subsection (1) must be assessed the penalty provided in 15-8-309.

(3) The department may adopt any reasonable rules necessary to insure that the possessor or other beneficial user of tax-exempt property complies with the provisions of this part.

History: En. Sec. 1, Ch. 683, L. 1983; amd. Sec. 3, Ch. 104, L. 1993; amd. Sec. 6, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

Centrally administered tax-exempt property, 15-23-111.

15-24-1208. Apportionment of tax-exempt property. (1) If property is owned in any manner by both a tax-exempt person or entity and a person or entity subject to taxation, the ownership interest of the person or entity subject to taxation in the property must be assessed, and that interest is taxable. The department of revenue shall assess the value of the taxable interest in the property by prorating the value of the property between the taxable interest and the nontaxable interest based on the ownership interests shown on the title to the property or any other document that evidences the ownership of the property. If there is no title to the property or other document that evidences the ownership interests or if the title or other document does not show the ownership interest, the value of the property must be prorated among the owners as if each owner owned equal interests in the property.

(2) If property is tax-exempt by virtue of its use, it loses its tax-exempt status when the tax-exempt use ends. If the property is used for both a tax-exempt use and a taxable use, the property is taxed based on the taxable use. The department shall assess the property based on the ratio of the taxable use to the total tax-exempt and taxable use during the preceding calendar year multiplied by the market value of the property.

History: En. Sec. 1, Ch. 90, L. 1993.

Part 13

Montana Economic Land Development Act (Repealed. Sec. 1, Ch. 48, L. 1985)

Part Compiler's Comments

Histories of Repealed Sections:

15-24-1301.	En. 84-7501 by Sec. 1, Ch. 549, L. 1975; R.C.M. 1947, 84-7501.
15-24-1302.	En. 84-7502.1 by Sec. 1, Ch. 582, L. 1977; R.C.M. 1947, 84-7502.1.
15-24-1303.	En. 84-7503.1 by Sec. 2, Ch. 582, L. 1977; R.C.M. 1947, 84-7503.1.
15-24-1304.	En. 84-7504.1 by Sec. 3, Ch. 582, L. 1977; R.C.M. 1947, 84-7504.1; amd. Sec. 6, Ch. 274, L. 1981.
15-24-1305.	En. 84-7505.1 by Sec. 4, Ch. 582, L. 1977; R.C.M. 1947, 84-7505.1.
15-24-1306.	En. 84-7508.1 by Sec. 5, Ch. 582, L. 1977; R.C.M. 1947, 84-7508.1.
15-24-1307.	En. 84-7509.1 by Sec. 6, Ch. 582, L. 1977; R.C.M. 1947, 84-7509.1.
15-24-1308.	En. 84-7510.1 by Sec. 7, Ch. 582, L. 1977; R.C.M. 1947, 84-7510.1; amd. Sec. 24, Ch. 693, L. 1979.
15-24-1309.	En. 84-7511.1 by Sec. 8, Ch. 582, L. 1977; R.C.M. 1947, 84-7511.1.
15-24-1310.	En. 84-7512.1 by Sec. 9, Ch. 582, L. 1977; R.C.M. 1947, 84-7512.1.
15-24-1311.	En. 84-7513.1 by Sec. 10, Ch. 582, L. 1977; R.C.M. 1947, 84-7513.1; amd. Sec. 25, Ch. 693, L. 1979.
15-24-1312.	En. 84-7514.1 by Sec. 11, Ch. 582, L. 1977; R.C.M. 1947, 84-7514.1.
15-24-1313.	En. 84-7516.1 by Sec. 13, Ch. 582, L. 1977; R.C.M. 1947, 84-7516.1.
15-24-1314.	En. 84-7517.1 by Sec. 14, Ch. 582, L. 1977; R.C.M. 1947, 84-7517.1.
15-24-1315.	En. 84-7518.1 by Sec. 15, Ch. 582, L. 1977; R.C.M. 1947, 84-7518.1.
15-24-1316.	En. 84-7519.1 by Sec. 16, Ch. 582, L. 1977; R.C.M. 1947, 84-7519.1.
15-24-1317.	En. 84-7515.1 by Sec. 12, Ch. 582, L. 1977; R.C.M. 1947, 84-7515.1.
15-24-1318.	En. 84-7520.1 by Sec. 17, Ch. 582, L. 1977; R.C.M. 1947, 84-7520.1.

Part 14

New Industry — Real Property Improvements

15-24-1401. Definitions. The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) "Expansion" means that the industry has added after July 1, 1987, at least $50,000 worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

(2) "Industry" includes but is not limited to a firm that:

(a) engages in the mechanical or chemical transformation of materials or substances into products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget;

(b) engages in the extraction or harvesting of minerals, ore, or forestry products;

(c) engages in the processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products;

(d) engages in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of the industry's gross sales or receipts are earned from outside the state;

(e) earns 50% or more of its annual gross income from out-of-state sales; or

(f) engages in the production of electrical energy in an amount of 1 megawatt or more by means of an alternative renewable energy source as defined in 90-4-102.

(3) "New" means that the firm is new to the jurisdiction approving the resolution provided for in 15-24-1402(2) and has invested after July 1, 1987, at least $125,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New industry does not include property treated as new industrial property under 15-6-135.

(4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable value under 15-24-1402 and this section.

History: En. Sec. 2, Ch. 564, L. 1981; amd. Sec. 1, Ch. 574, L. 1987; amd. Sec. 2, Ch. 694, L. 1991; amd. Sec. 29, Ch. 51, L. 1999; amd. Sec. 7, Ch. 591, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 591 in definition of industry inserted (f) concerning electrical energy production from an alternative renewable energy source. Amendment effective July 1, 2001.

Applicability: Section 30, Ch. 591, L. 2001, provided: "[Sections 6 through 12 and 14] [15-6-225, 15-24-1401, 15-31-124, 15-32-102, 15-32-109, 15-32-115, 15-32-201, and 15-32-402] apply to tax years beginning after December 31, 2001."

15-24-1402. New or expanding industry — assessment — notification. (1) In the first 5 years after a construction permit is issued, qualifying improvements or modernized processes that represent new industry or expansion of an existing industry, as designated in the approving resolution, must be taxed at 50% of their taxable value. Subject to 15-10-420, each year thereafter, the percentage must be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property must be taxed at 100% of its taxable value.

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body of the affected county or the incorporated city or town must have approved by separate resolution for each project, following due notice as defined in 76-15-103 and a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction. The governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) Subject to 15-10-420, the governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) must include a definition of the improvements or modernized processes that qualify for the tax treatment that is to be allowed in the taxing jurisdiction. The resolution may provide that real property other than land, personal property, improvements, or any combination thereof is eligible for the tax benefits described in subsection (1).

(3) The taxpayer shall apply to the department for the tax treatment allowed under subsection (1). The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body shall indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. Upon receipt of the form with the approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change pursuant to this section.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion. The benefit described in subsection (1) may not apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, or 20-9-360 or otherwise required under state law.

(5) Prior to approving the resolution under this section, the governing body shall notify by certified mail all taxing jurisdictions affected by the tax benefit.

History: **En. Sec. 3, Ch. 564, L. 1981; amd. Sec. 2, Ch. 574, L. 1987; amd. Sec. 3, Ch. 694, L. 1991; amd. Sec. 48, Ch. 767, L. 1991; amd. Sec. 116, Ch. 27, Sp. L. November 1993; amd. Sec. 97, Ch. 584, L. 1999.**

Part 15

Remodeling of Buildings or Structures

15-24-1501. Remodeling, reconstruction, or expansion of buildings or structures — assessment provisions — levy limitations. (1) Subject to 15-10-420 and the authority contained in subsection (4) of this section, remodeling, reconstruction, or expansion of existing buildings or structures, which increases their taxable value by at least 2 ½% as determined by the department, may receive tax benefits during the construction period and for the following 5 years in accordance with subsections (2) through (4) and the following schedule. The percentages must be applied as provided in subsections (3) and (4) and are limited to the increase in taxable value caused by remodeling, reconstruction, or expansion:

Construction period	0%
First year following construction	20%
Second year following construction	40%
Third year following construction	60%
Fourth year following construction	80%
Fifth year following construction	100%
Following years	100%

(2) In order to confer the tax benefits described in subsection (1), the governing body of the affected county or, if the construction will occur within an incorporated city or town, the governing body of the incorporated city or town shall approve by resolution for each remodeling, reconstruction, or expansion project the use of the schedule provided for in subsection (1) or a schedule adopted pursuant to subsection (4).

(3) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for high school district and elementary school district purposes and to the number of mills levied and assessed by the local governing body approving the benefit. The benefit described in subsection (1) may not apply to statewide levies.

(4) A local government may, in the resolution required by subsection (2), modify the percentages contained in subsection (1) that apply to the first year following construction through the fourth year following construction. A local government may not modify the percentages contained in subsection (1) that apply to the fifth year following construction or years following the fifth year. A local government may not modify the time limits contained in subsection (1). The modifications to the percentages in subsection (1) adopted by a local government apply uniformly to each remodeling, reconstruction, or expansion project approved by the governing body.

History: **En. Sec. 2, Ch. 599, L. 1981; amd. Sec. 1, Ch. 439, L. 1985; amd. Sec. 1, Ch. 695, L. 1989; amd. Sec. 117, Ch. 27, Sp. L. November 1993; amd. Sec. 98, Ch. 584, L. 1999.**

15-24-1502. Tax exemption and abatement for remodeling, reconstruction, or expansion of certain commercial property — approval. (1) (a) Subject to the conditions of this section, remodeling, reconstruction, or expansion of an existing commercial building or structure that increases its taxable value by at least 5%, as determined by the department, may receive a property tax exemption during the construction period, not to exceed 12 months, and for up to 5 years following completion of construction. The property tax exemption is limited to 100% of the increase in taxable value caused by remodeling, reconstruction, or expansion.

(b) (i) In addition to the property tax exemption described in subsection (1)(a), the buildings and structures may receive a property tax reduction for 4 years following the exemption period as provided in this subsection (1)(b). The percentages must be applied to the increase in taxable value caused by remodeling, reconstruction, or expansion according to the following schedule:

First year following the exemption period	20%
Second year following the exemption period	40%
Third year following the exemption period	60%
Fourth year following the exemption period	80%
Fifth year following the exemption period	100%
Following years	100%

(ii) Mill levies are assessed against the reduced taxable value of the remodeling, reconstruction, or expansion determined under subsection (1)(b)(i).

(c) To be eligible for the property tax exemption and the property tax reduction, the commercial building or structure may not have been used in a business for at least 6 months immediately preceding the date of application to the governing body for approval under subsection (2).

(2) (a) In order to confer the tax benefits described in subsection (1), the governing body of the affected county or consolidated government or, if the construction will occur within an incorporated city or town, the governing body of the incorporated city or town shall approve by resolution for each remodeling, reconstruction, or expansion project the use of the property tax exemption and property tax reduction.

(b) The governing body may not grant the property tax benefits described in subsection (1) if property taxes on the buildings or structures are delinquent.

History: En. Sec. 1, Ch. 135, L. 2001.

Compiler's Comments

Effective Date: Section 4, Ch. 135, L. 2001, provided that this section is effective on passage and approval. Approved March 27, 2001.

Retroactive Applicability: Section 5, Ch. 135, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

Part 16

Historic Properties

15-24-1601. Purpose. The purpose of this part is to provide legislation and guidance for the administration of a property tax abatement program for the restoration, rehabilitation, expansion, and new construction of certified residential and commercial properties located within national register historic districts and properties listed in the National Register of Historic Places. The abatement does not apply to the tax on personal property.

History: En. Sec. 1, Ch. 424, L. 1989.

15-24-1602. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the local review board as provided in 15-24-1605.

(2) "Certification" means approval by the board or state historic preservation office of a property's qualification for the property tax abatement under the terms of this part.

(3) "Contributing" means a building, site, structure, or object with historic architectural qualities, historic association, or archaeological value for which a property is significant because:

(a) it was present during a period of significant local or state history and possesses historic design or architectural integrity reflecting its character at that time or is capable of yielding important information about the period; or

(b) it independently meets the criteria for listing in the National Register of Historic Places.

(4) "Rehabilitation" means the process of returning a property to a state of utility through repair or alteration that makes possible an efficient contemporary use while preserving those features of the property that are significant to its historical, architectural, and cultural values.

(5) "Restoration" means the process of accurately recovering the form, details, and setting of a property as it appeared when it was originally built or constructed by removing later work or replacing missing earlier work.

History: En. Sec. 2, Ch. 424, L. 1989.

15-24-1603. Historic property tax abatement — levy limitations. (1) Subject to 15-10-420, a historic property undergoing rehabilitation, restoration, expansion, or new construction that meets criteria established by the review process described in 15-24-1605 or 15-24-1606 may receive a tax abatement during the construction period, not to exceed 12 months, and for up to 5 years following completion of the construction in accordance with subsections (2) and (3). The tax abatement is limited to 100% of the increase in taxable value caused by the rehabilitation, restoration, expansion, or new construction.

(2) In order to confer the tax benefits described in subsection (1), the governing body of the county or incorporated city or town where the improvement occurs shall establish by resolution the process for the use of the tax abatement provisions described in subsection (1).

(3) Property that receives a tax benefit under this part is not entitled to any other exemption or special valuation provided by Montana law during the period of the abatement.

(4) (a) The tax abatement applies only to the number of mills levied:

(i) for high school and elementary school district purposes; and

(ii) by the local governing body approving the abatement.

(b) The abatement may not apply to statewide levies.

History: En. Sec. 3, Ch. 424, L. 1989; amd. Sec. 99, Ch. 584, L. 1999.

15-24-1604. Eligibility. A property that meets the design review criteria in 15-24-1605 is eligible for the property tax abatement if it is:

(1) located within the boundaries of a national register historic district and contributes to the district, as determined by the state historic preservation office;

(2) a newly constructed property within the boundaries of a national register historic district that meets design review criteria as being architecturally compatible with the historic district, as determined by the local review board or the state historic preservation office; or

(3) listed individually in the National Register of Historic Places.

History: En. Sec. 4, Ch. 424, L. 1989.

15-24-1605. Responsibilities of local governing bodies — local review board — design review process. (1) A local governing body that approves the tax benefit may designate a local review board to establish an application and review process to certify eligible properties. The review process must include design review criteria based on the secretary of the interior's standards for preservation projects or other standards approved by the state historic preservation office.

(2) The board shall include:

(a) at least three members with professional expertise in history, planning, archaeology, architectural history, historic archaeology, or another historic preservation-related discipline;

(b) at least one architect; and

(c) up to two members of the general public.

(3) The board shall determine whether a property is eligible under 15-24-1604 and is qualified for the tax abatement. The board shall approve or deny an application for the tax abatement and report its recommendation to the local governing body.

History: En. Sec. 5, Ch. 424, L. 1989.

15-24-1606. Responsibilities of the state historic preservation office. (1) If the local governing body approving the tax abatement does not appoint a board under the provisions of 15-24-1605, the state historic preservation office shall provide design review assistance and certification for qualifying properties.

(2) The state historic preservation office shall evaluate design review standards submitted to it for approval by the board.

History: En. Sec. 6, Ch. 424, L. 1989.

15-24-1607. Disqualification and penalty. (1) Following certification and during the period of tax abatement, a property that is altered in a way that adversely affects those elements that qualify it as historically contributing must be disqualified from receiving the tax abatement.

(2) If a historic property that has received a tax abatement under this part is disqualified, the owner is liable for back taxes, interest, and a penalty. These assessments must be extended

against the property on the next general real property tax roll, to be collected and distributed in the same manner as the currently assessed real property tax. The back taxes, interest, and penalty must equal the sum of the following:

(a) the difference in the total real property taxes due during the years the tax abatement was in effect and the total real property taxes which would have been due had the special assessment not been in effect for those years;

(b) interest on the amount calculated in subsection (2)(a) at the rate for delinquent property taxes provided for in 15-16-102; plus

(c) a penalty of 15% on the sum of subsections (2)(a) and (2)(b).

(3) Back taxes, interest, or penalty may not be imposed on a property transferred to an ownership that makes the property exempt from property taxation or if the property is destroyed by fire or an act of God.

History: En. Sec. 7, Ch. 424, L. 1989.

Part 17

Commercial and Other Property

15-24-1701. Suspension and cancellation of collection of certain property taxes on commercial property — subordination of county tax lien — local government discretion. (1) The governing body of a county or consolidated local government unit may suspend collection of delinquent property taxes on commercial property to facilitate the purchase and continued operation of a business utilizing the commercial property if the property has not been used in a business for 6 months immediately preceding the date of suspension.

(2) The governing body may refuse to suspend delinquent taxes if it determines that the purchase of the commercial property is not an arm's-length transaction or if the purchase otherwise appears to be a restructuring of ownership for the primary purpose of escaping payment of delinquent property taxes or if the governing body determines the suspension is not in the best interest of the county.

(3) If the purchaser is obtaining financing as a part of a purchase agreement, the purchaser may request and the governing body may grant a subordination of the suspended tax lien to the financing. The request must include an operational plan, levels of employment, and other factors the governing body may consider important in determining if subordination of the county's tax lien position is in the best interest of the people of the county. Subordination does not diminish any other claims of tax lien as established by this section.

(4) If a purchaser of the commercial property continuously utilizes the property in a profit-oriented, employment-stimulating business for 3 years from the date of purchase, the governing body may cancel the collection of the suspended delinquent property taxes. The governing body may not cancel the suspended delinquent property taxes if the purchaser is delinquent on taxes for any other property within the governing body's taxing jurisdiction.

History: En. Sec. 11(1) thru (3), Ch. 631, L. 1989; amd. Sec. 11, Ch. 16, L. 1991; amd. Sec. 1, Ch. 77, L. 1991.

15-24-1702. Resolution to suspend or cancel delinquent taxes. (1) In order for the governing body to grant a suspension or cancellation of delinquent property taxes pursuant to this section, it shall adopt a resolution after:

(a) providing notice, as set forth in 7-1-2121;

(b) holding a public hearing; and

(c) notifying the governor's office of budget and program planning and the department of revenue about a proposed action to suspend or cancel delinquent property taxes. The governor's office of budget and program planning and the department of revenue shall consult with the governing body regarding the impact on programs that would result from the proposed granting of the suspension or cancellation of the delinquent property taxes, and the governing body shall consider the information before reaching a final decision.

(2) The resolution must state that the suspension or cancellation is in the best interest of the people of the county or consolidated local government, based on full disclosure of all pertinent financial information by the new owner as required by the local government.

History: En. Sec. 11(4), Ch. 631, L. 1989; amd. Sec. 2, Ch. 422, L. 1993.

15-24-1703. Application of suspension or cancellation. The suspension or cancellation of delinquent property taxes pursuant to this part:

(1) applies to all mills levied in the county or otherwise required under state law, including levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, and 20-25-423;

(2) does not apply to assessments made against property for the payment of bonds issued pursuant to Title 7, chapter 12.

History: En. Sec. 11(5), Ch. 631, L. 1989.

15-24-1704. Terminated. Sec. 5, Ch. 422, L. 1993.

History: En. Sec. 1, Ch. 422, L. 1993.

Part 18
Business Incubators

Part Cross-References

Development coordination, Title 90, ch. 1.
Montana Capital Company Act, Title 90, ch. 8.

15-24-1801. Definitions. Unless the context requires otherwise, the following definitions apply to 15-24-1802:

(1) "Business incubator" means a facility in which space is leased to new small businesses and that provides shared services and business assistance to the new businesses in order to improve their chances of success. The services provided may include but are not limited to receptionist, copying, computer, telephone, secretarial, and meeting services. The assistance provided may include but is not limited to advice concerning marketing plans, business plans, accounting, and administration.

(2) "Local economic development organization" means a private, nonprofit organization whose primary purposes are to develop the economy of its area and to provide assistance to businesses in that area.

History: En. Sec. 1, Ch. 666, L. 1989.

15-24-1802. Business incubator tax exemption — procedure. (1) A business incubator owned or leased and operated by a local economic development organization is eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each business incubator in its respective jurisdiction. The governing body may not grant approval for the business incubator until all of the applicant's taxes have been paid in full or, if the property is leased to a business incubator, until all of the owner's property taxes on that property have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or leases and operates or will operate the business incubator.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body

has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies and assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law.

History: En. Sec. 2, Ch. 666, L. 1989; amd. Sec. 1, Ch. 669, L. 1991; amd. Sec. 118, Ch. 27, Sp. L. November 1993.

Part 19
Industrial Parks

15-24-1901. Definitions. Unless the context requires otherwise, the following definitions apply to this part:

(1) "Industrial park" means property zoned for light and heavy industry. The term includes fully developed or partially developed land and improvements and undeveloped land. The term also includes undeveloped land owned by a local economic development organization if the local economic development organization provides reasonable evidence and the governing body is satisfied that the property is suitable for development as an industrial park and that the local economic development organization will develop the land as an industrial park.

(2) "Local economic development organization" means a private, nonprofit organization whose primary purposes are to develop the economy of its area and to provide assistance to businesses in that area.

(3) "Port authority" means a port authority created under 7-14-1101 or 7-14-1102.

History: En. Sec. 1, Ch. 679, L. 1989; amd. Sec. 1, Ch. 277, L. 1995.

15-24-1902. Industrial park tax exemption — procedure — termination. (1) An industrial park owned and operated by a local economic development organization or a port authority is eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each industrial park in its respective jurisdiction. The governing body may not grant approval for the industrial park until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that:

(a) the local economic development organization:

(i) is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(ii) is engaged in economic development and business assistance work in the area; and

(iii) owns and operates or will own and operate the industrial development park; or

(b) the port authority legally exists under the provisions of 7-14-1101 or 7-14-1102.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law.

(5) If a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203.

History: En. Sec. 2, Ch. 679, L. 1989; amd. Sec. 1, Ch. 702, L. 1991; amd. Sec. 119, Ch. 27, Sp. L. November 1993.

Part 20
Local Economic Development Organizations

15-24-2001. Definitions. Unless the context requires otherwise, the following definitions apply to this part:

(1) "Building and land" means commercial improvements and land sold or donated to a local economic development organization for subsequent sale or lease to a profit-oriented, employment-stimulating business. The term includes commercial property that has not been used in a business for 6 months immediately preceding the sale or donation of the building and land to the local economic development organization.

(2) "Local economic development organization" means a private, nonprofit organization whose primary purposes are to develop the economy of its area and to provide assistance to businesses in that area.

History: En. Sec. 1, Ch. 693, L. 1991.

15-24-2002. Building and land tax exemption — procedure — termination. (1) A building and land owned by a local economic development organization that the local economic development organization intends to sell or lease to a profit-oriented, employment-stimulating business are eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the affected county, consolidated government, incorporated city or town, or school district in which the building and land are located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). The governing body shall approve a tax exemption by a separate resolution. The governing body may not grant approval for the building and land until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private, nonprofit corporation, as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or will own the building and land.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 and other levies required under state law.

(5) When a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203.

History: En. Sec. 2, Ch. 693, L. 1991; amd. Sec. 4, Ch. 693, L. 1991; amd. Sec. 120, Ch. 27, Sp. L. November 1993.

Parts 21 and 22 reserved

Part 23
Clean Coal Technology Projects
(Repealed. Sec. 2, Ch. 33, Sp. L. November 1993)

Part Compiler's Comments

Histories of Repealed Sections:

15-24-2301. En. Sec. 1, Ch. 722, L. 1991.

15-24-2302. En. Sec. 2, Ch. 722, L. 1991; amd. Sec. 121, Ch. 27, Sp. L. November 1993.

Part 24
Value-Added Manufacturing

15-24-2401. Purpose. The purpose of this part is to encourage value-added manufacturing in Montana by providing a taxable value decrease for a 7-year period for qualifying personal property of expanding industries that process Montana raw materials or use Montana semifinished products in manufacturing.

History: En. Sec. 1, Ch. 786, L. 1991.

15-24-2402. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Expansion" means that after December 31, 1991, the industry has added qualifying property within the jurisdiction either in the first tax year in which the taxable value decrease provided for in 15-24-2403 is to be received or in the preceding tax year. Expansion does not include property that:

(a) has qualified for the tax exemption under 15-24-1402; or

(b) will create an adverse impact on existing state, county, or municipal services.

(2) "Industry" is a firm that engages in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget and that engages in the:

(a) processing of Montana raw materials, such as minerals, ore, oil, gas, coal, agricultural products, and forestry products; or

(b) processing of semifinished products produced in Montana that are used by the industry as a raw material in further manufacturing.

(3) "Qualifying employee" means a person:

(a) whose job was created as a result of expansion; and

(b) whose position pays not less than three-quarters of the amount of the average wage as determined by the quarterly statistical report published by the department of labor and industry.

(4) "Qualifying property" means machinery and equipment that result in the hiring of qualifying employees used for the manufacture or processing of products described in subsection (2).

History: En. Sec. 2, Ch. 786, L. 1991; amd. Sec. 30, Ch. 51, L. 1999.

15-24-2403. Expanding industry taxable value decrease — application — approval — reports. (1) After December 31, 1991, an existing industry with qualifying property that represents an expansion of the industry is entitled to receive a decrease in the tax rate for class eight property if the property results in the hiring of full-time qualifying employees for each year in which the taxable value decrease is in effect.

(2) A person, firm, or other group seeking to qualify its property for the taxable value decrease under subsection (1) shall apply to the department of revenue on a form provided by the department. The application must include:

(a) the description of the personal property that may qualify for the taxable value decrease;

(b) the date on which the qualifying property is intended to be operational;

(c) the rate of pay and number of existing employees and new employees to be used in the operation of the qualifying property;

(d) a statement that the new employees are in addition to the existing workforce of the industry and the specific responsibilities of each new employee; and

(e) a statement that all the applicant's taxes are paid in full.

(3) The department shall make an initial determination as to whether the industry qualifies for the taxable value decrease.

(4) (a) If the department determines that the property qualifies for a taxable value decrease, the governing body of the affected county, consolidated government, incorporated city or town, or school district shall give due notice as defined in 76-15-103 and hold a public hearing. Each governing body may either approve or disapprove the grant of taxable value decrease. A governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) The resolution provided for in subsection (4)(a) must include the document that grants approval of the application that was submitted to the department by the taxpayer seeking the taxable value decrease.

(5) The tax reduction described in subsection (1) applies to:

(a) the number of mills levied and assessed by each governing body approving the benefit over which the governing body has sole discretion; and

(b) statewide levies if the governing body approving the tax reduction is a county, consolidated government, or incorporated city or town.

(6) The number of new employees used by the department to calculate the taxable value decrease in subsection (7) must be determined by the wages paid to qualifying employees. A qualifying employee paid the amount of the average wage as determined by the quarterly statistical report published by the department of labor and industry is considered one new employee. Qualifying employees are considered equivalent new employees if they are paid three-quarters of the average wage or more. The qualifying employee is the equivalent of a new employee in the same fraction that his wages are to the average wage, but a qualifying employee may not be considered more than two new employees.

(7) (a) Qualifying property is entitled to a decrease in the taxable rate of class eight property based upon a percentage difference between a possible low rate of 3% and a high rate of the existing class eight property tax rate. The reduced taxable value rate is determined by calculating the inverse of the number of equivalent new employees divided by the number of existing employees and multiplying the product of that calculation by the decimal equivalent of the tax rate for class eight property.

(b) For each year that the taxable value decrease is in effect, the taxpayer shall report by March 1 to the department, on forms prescribed by the department, the wages of and the number of qualifying employees that are used in the operation of the qualifying property for which the taxable value decrease was granted.

History: **En. Sec. 3, Ch. 786, L. 1991.**

15-24-2404. Exclusion from other property tax reductions or exemptions. If a taxable value decrease is taken pursuant to this part, other property tax reductions or exemptions, including but not limited to those provided in 15-6-135, 15-24-1402, and 15-24-1501, are not allowed for the qualifying property.

History: **En. Sec. 4, Ch. 786, L. 1991.**

15-24-2405. Rules. The department of revenue shall prescribe rules necessary to carry out the purposes of this part.

History: **En. Sec. 5, Ch. 786, L. 1991.**

Part 25
Trucks and Truck Tractors
(Repealed. Sec. 41, Ch. 496, L. 1997)

Part Compiler's Comments

History of Repealed Section:

15-24-2501. En. Sec. 8, Ch. 575, L. 1993.

Parts 26 through 29 reserved

Part 30
Electrical Generation and Delivery Facilities

Part Compiler's Comments

Effective Date: Section 7, Ch. 592, L. 2001, provided that this part is effective on passage and approval. Approved May 5, 2001.

15-24-3001. Electrical generation and transmission facility exemption — definitions. (1) (a) Except as provided in subsections (1)(b) and (3), an electrical generation facility and related delivery facilities constructed in the state of Montana after May 5, 2001, and before January 1, 2006, may be exempt from property taxation for a 10-year period beginning on the date that an owner or operator of an electrical generation facility and related delivery facilities commences to construct the facility as defined in 75-20-104(6)(a) and (6)(b). In order to be exempt from property taxation, an owner and operator of an electrical generation facility and related delivery facilities shall offer contracts to sell 50% of that facility's net generating output at a cost-based rate, which includes a rate of return not to exceed 12%, to customers for a 20-year period from the date of the facility's completion.

(b) The property tax exemption allowed under subsection (1)(a) is limited to a 5-year period for generation facilities powered by oil or gas turbines.

(2) To the extent that 50% of the net generating output of the facility is not contracted for delivery to consumers for a contract term extending 5 years to 20 years from the completion of the facility, as determined by the owner, surplus capacity must be offered on a declining contract term basis for the remainder of the contract period at a cost-based rate that includes a rate of return not to exceed 12%. Surplus capacity that is not contracted for in this fashion may be sold at market rates.

(3) (a) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation under subsection (1)(a) signs a contract to sell power as required in subsection (1) and then fails to perform the contract during the first 10-year period, the 10-year property tax exemption in subsection (1) is void and the property is subject to a rollback tax as provided in 15-24-3002.

(b) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation under subsection (1)(b) signs a contract to sell power as required in subsection (1) and then fails to perform the contract during the first 5-year period, the 5-year property tax exemption in subsection (1) is void and the property is subject to a rollback tax as provided in 15-24-3002.

(c) If an owner or operator fails to perform the contract due to earthquakes or other acts of God, theft, sabotage, acts of war, other social instabilities, or equipment failure, the property tax exemption in subsection (1)(a) or (1)(b) is not void and the owner or operator is not subject to the rollback tax as provided in 15-24-3002.

(4) For the purposes of this section, the following definitions apply:

(a) (i) "Electrical generation facility" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce 20 average megawatts or more of electric power. The term is limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(ii) The term does not include:

(A) electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes; or

(B) a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and that is classified under 15-6-134 and 15-6-138.

(b) "Related delivery facilities" means transmission facilities necessary to deliver the energy from the electrical generation facility to the existing network transmission system.

(c) "Surplus capacity" means that portion of the 50% of net generating output not contracted for use.

(5) The department shall appraise exempt electrical generation facilities for each year that the property is exempt and determine the taxable value of the property as if it were subject to property taxation. The taxable value determined by the department must be included as taxable valuation for the purposes of county classification under 7-1-2111.

History: En. Sec. 1, Ch. 592, L. 2001.

15-24-3002. Rollback tax — computation. (1) (a) If an owner or operator fails to perform the contract pursuant to 15-24-3001(1), the property is subject to a rollback tax in addition to the property tax levied on the property. The rollback tax is a lien on the property and is due and payable by the owner of the property within 180 days after failure to perform the contract.

(b) As used in this section, "rollback" means the period of time that an owner or operator of an electrical generation facility was exempt from property taxes pursuant to 15-24-3001.

(2) The department shall determine the amount of rollback tax due on the property by:

(a) determining the taxable value of the property;

(b) multiplying this value by the sum of the annual mill levies that would have been levied had the property exemption pursuant to 15-24-3001 not been applied in the taxing jurisdiction in which the electrical generation property is located during the rollback period; and

(c) subtracting from this figure the actual property tax paid on the property during this period less any impact fee paid pursuant to 15-24-3005, if any.

History: En. Sec. 2, Ch. 592, L. 2001.

15-24-3003 and 15-24-3004 reserved.

15-24-3005. Electrical generation facility impact fee for local governmental units and school districts. (1) (a) If an owner or operator of an electrical generation facility, as defined in 15-24-3001, is exempt from property taxation pursuant to 15-24-3001, the owner or operator of the facility is subject to an initial local government and local school impact fee. In the first 2 years of construction, the impact fee may not exceed 0.75% of the total cost of constructing the electrical generation facility.

(b) In the case of a generation facility powered by oil or gas turbines, the impact fee may not exceed 0.1% of the total construction cost in the remaining 3 years of the tax exemption period as provided in 15-24-3001.

(c) In the case of any other generation facility, the impact fee may not exceed 0.1% of the total construction cost in the subsequent 4 years and may not exceed 0.08% of the total construction cost in the remaining 4 years of the tax exemption period as provided in 15-24-3001.

(2) Except as provided in subsection (4), the jurisdictional area of a local governmental unit in which an electrical generation facility is located is the local governmental unit that is authorized to assess the impact fee pursuant to subsection (1).

(3) The impact fee must be distributed to the local governmental unit for local impacts and the impacted school districts.

(4) Subject to the conditions of 15-24-3006 and subsection (5) of this section, if the facility is located within the jurisdictional areas of multiple local governmental units of the county or contiguous counties, the local governmental units may enter into an interlocal agreement under Title 7, chapter 11, part 1, to determine how the fee should be distributed among the various local governmental units and impacted school districts pursuant to the percentage allocation required in subsection (3). The county in which the electrical generation facility is located is authorized to assess the fee under the interlocal agreement.

(5) For purposes of this section, a "local governmental unit" means a county, city, or town. If an exempt electrical generation facility is located within a tax increment financing district, the tax increment financing district is considered a local governmental unit and is entitled to the distribution of impact fees under this section. A tax increment financing district may not

receive a distribution of impact fees if an exempt electrical generation facility is not located within the district.

(6) Impact fees imposed under subsection (4) must be deposited in the county electrical energy generation impact fee reserve account established in 15-24-3006 for the county in which the electrical generation facility is located. Money in the account may not be expended until the multiple local governmental units have entered into an interlocal agreement.

History: En. Sec. 3, Ch. 592, L. 2001.

15-24-3006. Electrical energy generation impact fee reserve account. (1) The governing body of a county receiving impact fees under 15-24-3005(4) shall establish an electrical energy generation impact fee reserve account to be used to hold the collections. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(2) Money may be expended from the account for any purpose of an interlocal agreement provided for in 15-24-3005. The county treasurer shall distribute money in the account to each local governmental unit according to the terms of the interlocal agreement.

(3) Money in the account must be invested as provided by law. Interest and income from the investment of the electrical energy generation impact fee reserve account must be credited to the account.

History: En. Sec. 4, Ch. 592, L. 2001.

15-24-3007. Electrical generation impact fund. (1) A local governmental unit, as defined in 15-24-3005, and a school district that receives impact fees pursuant to 15-24-3005(2) or 15-24-3006 shall establish an electrical generation impact fund for the deposit of the fees. A local governmental unit or school district may retain the money in the fund for any time period considered appropriate by the governing body of the local governmental unit or school district. Money retained in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(2) Money may be expended from the fund for any purpose allowed by law.

(3) Money in the fund must be invested as provided by law. Interest and income earned on the investment of money in the fund must be credited to the fund.

(4) The fund must be financially administered as a nonbudgeted fund by a city, town, or county under the provisions of Title 7, chapter 6, part 40, or by a school district under the provisions of Title 20, chapter 9, part 5.

History: En. Sec. 5, Ch. 592, L. 2001.

CHAPTER 25

DANGEROUS DRUG TAX
(Repealed. Sec. 74, Ch. 18, L. 1995; Sec. 4, Ch. 446, L. 1995)

Chapter Compiler's Comments

Histories of Repealed Sections:

15-25-101. En. Sec. 1, Ch. 563, L. 1987.

15-25-102. En. Sec. 2, Ch. 563, L. 1987.

15-25-103 through 15-25-110 reserved.

15-25-111. En. Sec. 3, Ch. 563, L. 1987; amd. Sec. 1, Ch. 421, L. 1989.

15-25-112. En. Sec. 4, Ch. 563, L. 1987.

15-25-113. En. Sec. 5, Ch. 563, L. 1987.

15-25-114. En. Sec. 6, Ch. 563, L. 1987; amd. Sec. 7, Ch. 811, L. 1991.

15-25-115. En. Sec. 7, Ch. 563, L. 1987; amd. Sec. 2, Ch. 421, L. 1989.

15-25-116 through 15-25-120 reserved.

15-25-121. En. Sec. 8, Ch. 563, L. 1987; amd. Sec. 3, Ch. 421, L. 1989.

15-25-122. En. Sec. 9, Ch. 563, L. 1987; amd. Sec. 13, Ch. 83, L. 1989; amd. Sec. 4, Ch. 421, L. 1989; amd. Sec. 15, Ch. 799, L. 1991; amd. Sec. 3, Ch. 455, L. 1993.

15-25-123. En. Sec. 10, Ch. 563, L. 1987; amd. Sec. 14, Ch. 83, L. 1989.

CHAPTERS 26 THROUGH 29
RESERVED

CHAPTER 30
INDIVIDUAL INCOME TAX

Part 1 — Rate and Return of Tax

15-30-101. Definitions.
15-30-102. Construction of net income.
15-30-103. Rate of tax.
15-30-104. Repealed.
15-30-105. Tax on nonresident.
15-30-106. Tax on lump-sum distributions.
15-30-107. Taxable liability on termination of independent liability fund.
15-30-108. Terminated.
15-30-109 reserved.
15-30-110. Exemption for gain on sale or exchange of certain capital assets.
15-30-111. Adjusted gross income.
15-30-112. Exemptions.
15-30-113. General definition of dependent.
15-30-114. Additional exemption for dependent child with a disability.
15-30-115. Physician's verification of disability required.
15-30-116. Veterans' bonus or military salary — exemptions.
15-30-117. Net operating loss — computation.
15-30-118 through 15-30-120 reserved.
15-30-121. Deductions allowed in computing net income.
15-30-122. Standard deduction.
15-30-123. Nondeductible items in computing net income.
15-30-124. Credit allowed resident taxpayers for income taxes imposed by foreign states or countries.
15-30-125. Credit for energy-conserving investments.
15-30-126. Small business corporation — deduction for donation of computer equipment to schools.
15-30-127. Tax deductibility.
15-30-128. Credit for expense of caring for certain elderly family members.
15-30-129. Tax credit for providing disability insurance for employees.
15-30-130. Credit for day-care facilities.
15-30-131. Nonresident and temporary resident taxpayers — adjusted gross income.
15-30-132. Change from nonresident to resident or vice versa.
15-30-133. Renumbered 15-30-1102.
15-30-134. Determination of marital status.
15-30-135. Tax on beneficiaries or fiduciaries of estates or trusts.
15-30-136. Computation of income of estates or trusts — exemption.
15-30-137. Determination of tax of estates and trusts.
15-30-138. Estates and trusts tax remedies.
15-30-139 and 15-30-140 reserved.
15-30-141. Tax as personal debt.
15-30-142. Returns and payment of tax — penalty and interest — refunds — credits.
15-30-143. Return of fiduciary.
15-30-144. Time for filing — extensions of time.
15-30-145. Revision of return by department — statute of limitations — examination of records and persons.
15-30-146. Tolling of statute of limitations.
15-30-147. Application for revision — appeal.
15-30-148. Judicial review.
15-30-149. Credits and refunds — period of limitations.
15-30-150. Voluntary checkoff for nongame wildlife programs.
15-30-151. Agriculture in Montana schools program account — administration.
15-30-152. Voluntary checkoff for agriculture in Montana schools program.
15-30-153. Funding for administration of special revenue accounts.
15-30-154 reserved.
15-30-155. Voluntary checkoff for child abuse and neglect prevention program.
15-30-156. Deduction for contributions to child abuse and neglect prevention program.
15-30-157. Deposit of deductible contributions.
15-30-158. Terminated.
15-30-159. Terminated.

15-30-160. Terminated.
15-30-161. Purpose.
15-30-162. Investment credit.
15-30-163. Credit for contributions to university system or private college foundations.
15-30-164. Credit for alternative fuel motor vehicle conversion.
15-30-165. Qualified endowments credit — definitions — rules.
15-30-166. Credit for contributions to qualified endowment.
15-30-167. Beneficiaries of estates — credit for contribution to qualified endowment.
15-30-168. Qualified research tax credit.
15-30-169 reserved.
15-30-170. Void.
15-30-171. Residential property tax credit for elderly — definitions.
15-30-172. Residential property tax credit for elderly — eligibility.
15-30-173. Residential property tax credit for elderly — disallowance or adjustment of certain claims.
15-30-174. Residential property tax credit for elderly — filing date.
15-30-175. Residential property tax credit for elderly — form of relief.
15-30-176. Residential property tax credit for elderly — computation of relief.
15-30-177. Residential property tax credit for elderly — limitations.
15-30-178. Residential property tax credit for elderly — proof of claim.
15-30-179. Residential property tax credit for elderly — denial of claim.
15-30-180. Credit for preservation of historic property.
15-30-181. Credit for contributions to affordable housing revolving loan account.
15-30-182 through 15-30-185 reserved.
15-30-186. Credit for dependent care assistance and referral services.
15-30-187 reserved.
15-30-188. Credit for physician practicing in rural area — definitions.
15-30-189. Tax credit for physician practicing in rural area.
15-30-190. Credit for physician practicing in rural area — limitations — repayment.
15-30-191. Credit for physician practicing in rural area — rulemaking authority.
15-30-192. Income tax relief — foreign capital depository assessment distribution.
15-30-193 and 15-30-194 reserved.
15-30-195. Terminated.
15-30-196 through 15-30-198 reserved.
15-30-199. Terminated.

Part 2 — Withholding and Estimated Tax

15-30-201. Definitions.
15-30-202. Withholding of tax from wages.
15-30-203. Employer liable for employment taxes.
15-30-204. Reporting and remittance requirements.
15-30-205. Amount withheld considered as tax collected.
15-30-206. Annual withholding statement.
15-30-207. Annual statement by employer.
15-30-208. Withheld taxes held in trust for state.
15-30-209. Violations by employer — penalties, interest, and remedies.
15-30-210. Electronic funds transfer and electronic reporting — employer option.
15-30-211. Renumbered 15-1-208 and 16-11-110.
15-30-212 through 15-30-214 reserved.
15-30-215. Voluntary state withholding from federal annuity — agreement with federal government.
15-30-216 through 15-30-220 reserved.
15-30-221 through 15-30-227. Repealed.
15-30-228. Repealed.
15-30-229 through 15-30-240 reserved.
15-30-241. Estimated tax — payment — exceptions — interest.
15-30-242. Repealed.
15-30-243 through 15-30-245 reserved.
15-30-246. Policy and purpose.
15-30-247. Withholding of lottery winnings.
15-30-248. Determination of employer status.
15-30-249. Confidentiality.
15-30-250. Application and distribution of payments.
15-30-251. Statute of limitations.
15-30-252 through 15-30-254 reserved.
15-30-255. Credits and refunds — period of limitations.
15-30-256. Employment defined and exclusions from definition of employment.
15-30-257. Special review procedure for certain tax issues that involve unemployment insurance benefit claim — notice — appeal.

Part 3 — Administration and Collection

15-30-301. Information agents' duties.
15-30-302. Oaths administered by director of revenue and designated employees.
15-30-303. Confidentiality of tax records.
15-30-304. Furnishing copy of federal return — copy of share of income, credit, and deductions schedule — copies of federal corrections — filing amended return required.
15-30-305. Department rules.
15-30-306. Agreements with contiguous states.
15-30-307. Closing agreements.
15-30-308 and 15-30-309 reserved.
15-30-310. Authority to collect tax — offset — hearing.
15-30-311. Warrant for distraint.
15-30-312. Jeopardy assessments.
15-30-313. Soldiers' and sailors' relief.
15-30-314. Stay of enforcement against military personnel.
15-30-315. Repealed.
15-30-316. Failure to file return or report — order to show cause — action by department.
15-30-317 through 15-30-320 reserved.
15-30-321. Penalties for violation of chapter.
15-30-322. Repealed.
15-30-323. Penalty and interest for deficiency.
15-30-324. Time limitations for prosecution.
15-30-325 through 15-30-330 reserved.
15-30-331. Certified copies of tax returns to taxpayer — fee.

Parts 4 and 5 reserved

Part 6 — Particular Income Tax Applications

15-30-601. Short title.
15-30-602. Definitions.
15-30-603. Montana farm and ranch risk management account — deposits — exclusion from income.
15-30-604. Montana farm and ranch risk management account — creation — administration.
15-30-605. Montana farm and ranch risk management account — distributions.

Parts 7 through 10 reserved

Part 11 — Pass-Through Entities

15-30-1101. Definition of "small business corporation".
15-30-1102. Income or license tax involving pass-through entities — information returns required.
15-30-1103 through 15-30-1110 reserved.
15-30-1111. Taxation of partners, shareholders, managers, and members.
15-30-1112. Composite returns and tax
15-30-1113. Consent or withholding — notice.
15-30-1114. Review of pass-through entity taxation by department.
15-30-1115 through 15-30-1120 reserved.
15-30-1121. Small business option unavailable on dissolution — exception.

Chapter Cross-References

Reservation of power to tax certain persons and property within land purchased by United States under Art. I, sec. 8, part 17, U.S. Const., 2-1-202.

Reservation of power to tax certain persons and property within Glacier National Park, 2-1-205.

Reservation of power to tax certain persons and property within land ceded to United States for Fort Peck Dam, 2-1-209.

Reservation of power to tax certain persons and property within land purchased by United States for national forest purposes, 2-1-210.

Capital gains or dividend income exempt — investment in small business investment company, Title 15, ch. 33, part 1.

Failure to pay income tax as evidence of nonresidency for university purposes, 20-25-504.

Income tax deduction for land sale to beginning farmers, 80-12-211.

Tax-exempt agricultural loan authority bonds, 80-12-305.

Tax credits for investment in Montana capital company, 90-8-202, 90-8-203.

Part 1
Rate and Return of Tax

15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is not in effect; and

(c) that is not a disregarded entity.

(4) "Department" means the department of revenue.

(5) "Disregarded entity" means a business entity:

(a) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; or

(b) that is a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code (26 U.S.C. 1361(b)(3)).

(6) "Dividend" means:

(a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

(7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(8) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

(9) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code (26 U.S.C. 61) or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code (26 U.S.C. 85) as amended.

(10) "Inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June 1980.

(11) "Information agents" includes all individuals and entities acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(12) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

(13) "Knowingly" is as defined in 45-2-101.

(14) "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

(15) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

(16) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

(a) a resident taxpayer on a lottery ticket; or

(b) a nonresident taxpayer on a lottery ticket purchased in Montana.

(17) (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) social security benefits received or accrued while a resident of the state;

(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; and

(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

(18) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(19) "Nonresident" means a natural person who is not a resident.

(20) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(21) "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

(22) "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.

(23) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

(24) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code (26 U.S.C. 401), or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code (26 U.S.C. 401 through 408) to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

(25) "Purposely" is as defined in 45-2-101.

(26) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(27) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

(28) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is in effect.

(29) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(30) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(31) "Taxable year" or "tax year" means the taxpayer's taxable year for federal income tax purposes.

(32) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter and unless otherwise specifically provided does not include a C. corporation.

History: En. Sec. 1, Ch. 181, L. 1933; re-en. Sec. 2295.1, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1947; amd. Sec. 1, Ch. 253, L. 1959; amd. Sec. 1, Ch. 62, L. 1967; amd. Sec. 157, Ch. 516, L. 1973; R.C.M. 1947, 84-4901; amd. Sec. 1, Ch. 476, L. 1979; amd. Sec. 1, Ch. 648, L. 1979; amd. Sec. 1, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 1, Ch. 548, L. 1981; amd. Sec. 1, Ch. 289, L. 1989; amd. Sec. 1, Ch. 823, L. 1991; amd. Sec. 1, Ch. 14, Sp. L. July 1992; amd. Sec. 26, Ch. 10, L. 1993; amd. Sec. 1, Ch. 634, L. 1993 (voided by I.R. No. 112, Nov. 8, 1994); amd. Sec. 65, Ch. 42, L. 1997; amd. Sec. 1, Ch. 31, L. 1999; amd. Sec. 2, Ch. 143, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 143 inserted definitions of corporation, disregarded entity, internal revenue code, limited liability company, limited liability partnership, Montana source income, nonresident, partner, partnership, pass-through entity, and S. corporation; in definition of dividend in (a) before "corporation" inserted "C." and substituted "earnings and profits" for "earnings or profits" and inserted (b) regarding distribution made by S. corporation; in definition of lottery winnings in introduction at beginning substituted "Lottery winnings" for "Montana lottery winnings" and substituted "periodic payments" for "annual payments"; in definition of taxpayer near beginning after "includes any person" inserted "entity", after "tax" inserted "or other obligation", near middle after "this chapter and" inserted "unless otherwise specifically provided", and at end substituted "a C. corporation" for "corporations"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

Cross-References

Business inventory credit, 15-6-136 (compiler's comments).

15-30-102. Construction of net income. For the purpose of raising revenue, the net income required to be shown on returns under this chapter and taken as the basis for determining the tax hereunder shall not be classified or held or construed to be property. All income except what has been expressly exempted under the provisions of this chapter and income not permitted to be taxed under the constitution of this state or the constitution or laws of the United States shall be included and considered in determining the net income of taxpayers within the provision of this chapter.

History: En. Sec. 31, Ch. 181, L. 1933; re-en. Sec. 2295.31, R.C.M. 1935; R.C.M. 1947, 84-4932.

Cross-References

Tax-deferred annuity program for teachers, 19-20-208.

Deferred income of public employee not subject to taxation until distribution, 19-50-103.

Payments received under Title 70, ch. 31, for relocation caused by federally assisted programs not income, 70-31-106.

15-30-103. Rate of tax. (1) There shall be levied, collected, and paid for each taxable year commencing on or after December 31, 1968, upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions as hereinafter provided, a tax on the following brackets of taxable income as adjusted under subsection (2) at the following rates:

(a) on the first $1,000 of taxable income or any part thereof, 2%;
(b) on the next $1,000 of taxable income or any part thereof, 3%;
(c) on the next $2,000 of taxable income or any part thereof, 4%;
(d) on the next $2,000 of taxable income or any part thereof, 5%;
(e) on the next $2,000 of taxable income or any part thereof, 6%;
(f) on the next $2,000 of taxable income or any part thereof, 7%;
(g) on the next $4,000 of taxable income or any part thereof, 8%;
(h) on the next $6,000 of taxable income or any part thereof, 9%;
(i) on the next $15,000 of taxable income or any part thereof, 10%;

(j) on any taxable income in excess of $35,000 or any part thereof, 11%.

(2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for that taxable year and round the cumulative brackets to the nearest $100. The resulting adjusted brackets are effective for that taxable year and shall be used as the basis for imposition of the tax in subsection (1) of this section.

History: En. Sec. 2, Ch. 181, L. 1933; amd. Sec. 1, Ch. 40, Ex. L. 1933; re-en. Sec. 2295.2, R.C.M. 1935; amd. Sec. 1, Ch. 228, L. 1957; amd. Sec. 1, Ch. 265, L. 1959; amd. Sec. 1, Ch. 281, L. 1965; amd. Sec. 1, Ch. 5, Ex. L. 1967; amd. Sec. 1, Ch. 10, Ex. L. 1969; R.C.M. 1947, 84-4902; amd. Sec. 2, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 2, Ch. 634, L. 1993 (voided by I.R. No. 112, Nov. 8, 1994).

Cross-References

Credit for foreign taxes, 15-30-124.
Investment credit, 15-30-162.
Alternative energy system credit, 15-32-201.
Credit for public contractor's license fee, 15-50-207.
Tax credits for investment in Montana capital company, 90-8-202, 90-8-203.

15-30-104. Repealed. Sec. 3, Ch. 422, L. 1981.

History: En. Sec. 2, Ch. 10, Ex. L. 1969; amd. Sec. 40, Ch. 9, 2nd Ex. L. 1971; R.C.M. 1947, 84-4902.1(part).

15-30-105. Tax on nonresident. (1) (a) A tax is imposed upon each nonresident equal to the tax computed under 15-30-103 as if the nonresident were a resident during the entire tax year, multiplied by the ratio of Montana source income to total income from all sources.

(b) This subsection (1) does not permit any items of income, gain, loss, deduction, expense, or credit to be counted more than once in determining the amount of Montana source income, and the department may adopt rules that are reasonably necessary to prevent duplication or to provide for allocation of particular items of income, gain, loss, deduction, expense, or credit.

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, each nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. The tax is in lieu of the tax imposed under 15-30-103 and subsection (1)(a) of this section. The gross volume of sales made in Montana during the tax year must be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact.

History: En. Sec. 3, Ch. 181, L. 1933; re-en. Sec. 2295.3, R.C.M. 1935; amd. Sec. 2, Ch. 253, L. 1959; amd. Sec. 1, Ch. 199, L. 1963; amd. Sec. 1, Ch. 15, L. 1971; R.C.M. 1947, 84-4903; amd. Sec. 1, Ch. 422, L. 1981; amd. Sec. 2, Ch. 14, Sp. L. July 1992; amd. Sec. 3, Ch. 634, L. 1993 (voided by I.R. No. 112, Nov. 8, 1994); amd. Sec. 2, Ch. 31, L. 1999; amd. Sec. 7, Ch. 143, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 143 in (1)(a) substituted text imposing tax on nonresident for former text that read: "A tax on income earned in Montana is imposed upon each person not a resident of this state. The tax must be levied, collected, and paid annually at the rates specified in 15-30-103 with respect to the nonresident's entire net income. After calculating the tax imposed, the tax due and payable must be determined based upon the ratio of income earned in Montana to total income. Interest income from installment sales of real or tangible commercial or business property located in Montana is considered income earned in Montana. Income derived from Montana lottery winnings is considered income earned in Montana"; inserted (1)(b) prohibiting double counting in determining Montana source income and authorizing department to adopt rules; in (2) in second sentence at end inserted "and subsection (1)(a) of this section"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

Cross-References

Multistate Tax Compact, Title 15, ch. 1, part 6.

15-30-106. Tax on lump-sum distributions. (1) There is imposed a separate tax on lump-sum distributions.

(2) The tax is 10% of the amount of tax determined under section 402(e) of the Internal Revenue Code of 1954, as amended, or as section 402(e) may be renumbered or amended.

(3) All means available for the administration and enforcement of income taxes shall be applied to the tax on lump-sum distributions.

History: En. Sec. 1, Ch. 380, L. 1983.

15-30-107. Taxable liability on termination of independent liability fund. If an independent liability fund established pursuant to Title 33, chapter 27, is terminated as provided in 33-27-119, the income from the principal distributed pursuant to 33-27-119(3) is taxable to that person or persons under the applicable provisions of this chapter.

History: En. Sec. 18, Ch. 564, L. 1987; amd. Sec. 1, Ch. 111, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 111 substituted "33-27-119(3)" for "33-27-119(2)". Amendment effective October 1, 2001.

15-30-108. Terminated. Sec. 102, Ch. 11, Sp. L. June 1989.

History: En. Sec. 6, Ch. 666, L. 1987; En. Sec. 65, Ch. 11, Sp. L. June 1989.

15-30-109 reserved.

15-30-110. Exemption for gain on sale or exchange of certain capital assets. Notwithstanding the provisions of 15-30-111, adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

History: En. Sec. 7, Ch. 666, L. 1987.

15-30-111. *(Temporary)* **Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted; and

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes; and

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and

salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income. *(Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)*

15-30-111. *(Effective on occurrence of contingency)* **Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted; and

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income. *(Subsection (2)(f) terminates*

on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)

History: En. Sec. 5, Ch. 181, L. 1933; re-en. Sec. 2295.5, R.C.M. 1935; amd. Sec. 1, Ch. 167, L. 1947; amd. Sec. 1, Ch. 260, L. 1955; amd. Sec. 1, Ch. 58, L. 1963; amd. Sec. 1, Ch. 129, L. 1965; amd. Sec. 1, Ch. 236, L. 1971; amd. Sec. 1, Ch. 345, L. 1971; amd. Sec. 1, Ch. 158, L. 1975; amd. Sec. 1, Ch. 411, L. 1975; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 84-4905; amd. Sec. 1, Ch. 483, L. 1981; amd. Sec. 2, Ch. 537, L. 1981; amd. Sec. 1, Ch. 546, L. 1981; amd. Sec. 1, Ch. 550, L. 1981; amd. Sec. 1, Ch. 13, L. 1983; amd. Sec. 1, Ch. 634, L. 1983; amd. Sec. 1, Ch. 198, L. 1985; amd. Sec. 1, Ch. 364, L. 1985; amd. Sec. 1, Ch. 464, L. 1985; amd. Sec. 1, Ch. 682, L. 1985; amd. Sec. 48, Ch. 370, L. 1987; amd. Sec. 10, Ch. 494, L. 1987; amd. Sec. 1, Ch. 657, L. 1987; amd. Sec. 1, Ch. 532, L. 1989; amd. Sec. 3, Ch. 617, L. 1989; amd. Sec. 1, Ch. 807, L. 1991; amd. Sec. 2, Ch. 823, L. 1991; amd. Sec. 4, Ch. 634, L. 1993 (voided by I.R. No. 112, Nov. 8, 1994); amd. Sec. 1, Ch. 278, L. 1995; amd. Sec. 8, Ch. 295, L. 1995; amd. Sec. 1, Ch. 399, L. 1995; amd. Sec. 3, Ch. 479, L. 1995; amd. Sec. 66, Ch. 42, L. 1997; amd. Sec. 3, Ch. 123, L. 1997; amd. Sec. 12, Ch. 540, L. 1997; amd. Sec. 8, Ch. 544, L. 1997; amd. Sec. 1, Ch. 327, L. 1999; amd. Sec. 1, Ch. 447, L. 1999; amd. Sec. 6, Ch. 262, L. 2001; amd. Sec. 12, Ch. 272, L. 2001; amd. Sec. 4, Ch. 468, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 262 inserted (2)(o) excluding deposits, not exceeding the amount set forth in 15-30-603, in an account provided for in 15-30-601 through 15-30-605 in any tax year for which a deduction is not prohibited for federal income tax purposes. Amendment effective October 1, 2001, and terminates on occurrence of contingency.

Chapter 272 inserted (2)(q) regarding principal and income deposited in or withdrawn from health care expense trust account; and made minor changes in style. Amendment effective on occurrence of contingency.

Chapter 468 deleted former (2)(l) that read: "(l) money, not exceeding $3,000 for each taxpayer, contributed to a family education savings program account established in accordance with 15-62-201"; at beginning of (2)(l) substituted "contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account" for "principal withdrawn from an account" and at end after "beneficiary" deleted "of the taxpayer"; inserted (8) regarding reduction of adjusted gross income by an individual who contributes to one or more accounts established under the Montana family education savings program"; and made minor changes in style. Amendment effective April 30, 2001.

Applicability: Section 8, Ch. 262, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

Contingent Termination: Section 9, Ch. 262, L. 2001, provided: "[This act] [15-30-601 through 15-30-605 and 15-30-111(2)(o)] terminates on certification by the director of the department of revenue to the governor of the passage and approval of a similar program and deduction at the federal level. The director shall provide a copy of the certification to the secretary of state and the code commissioner."

Contingent Effective Date: Section 19(2), Ch. 272, L. 2001, provided that the version effective on occurrence of contingency is "effective on the date that the secretary of state receives certification from the department of administration pursuant to [section 13] [not codified] that the commissioner of internal revenue has determined that the plan established pursuant to [sections 1 through 10] [Title 2, chapter 18, part 13] is qualified for a tax exemption pursuant to section 501(c)(9) of the Internal Revenue Code."

Contingent Termination: Section 3, Ch. 634, L. 1983, provided: "This act terminates if congress passes and the president approves legislation that removes the provision in section 6053(c)(3) of the Internal Revenue Code of 1954 that requires an employee allocation for tax purposes of 8% of gross receipts of the business for which the employee works. If this act terminates, it does so on the date of the final approval of the congressional legislation."

Cross-References

Exemption of bonds financing county-operated hospitals and nursing homes, 7-34-2416.

Deduction allowed for capital investment in a building for energy conservation purpose, 15-32-103.

Deferred income of public employee not subject to taxation until distribution, 19-50-103.

Exemption of airport bonds, 67-11-303.

Payment received under Title 70, ch. 31, for relocation caused by federally assisted programs not income, 70-31-106.

Income tax deduction for income from land sale to beginning farmers, 80-12-211.

Exemption of bonds issued by conservancy district, 85-9-626.

Exemption of bonds issued by Board of Housing, 90-6-125.

Montana Health Facility Authority obligations — tax exemption, 90-7-112.

Tax credits for investment in Montana capital company, 90-8-202, 90-8-203.

15-30-112. Exemptions. (1) Except as provided in subsection (6), in the case of an individual, the exemptions provided by subsections (2) through (5) shall be allowed as deductions in computing taxable income.

(2) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer if he has attained the age of 65 before the close of his taxable year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer if he is blind at the close of his taxable year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer, except that if the spouse dies during such taxable year, such determination shall be made as of the time of such death.

(c) For purposes of this subsection (4), an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for each dependent:

(i) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $800; or

(ii) who is a child of the taxpayer and who:

(A) has not attained the age of 19 years at the close of the calendar year in which the taxable year of the taxpayer begins; or

(B) is a student.

(b) No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(c) For purposes of subsection (5)(a)(ii), the term “child” means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(d) For purposes of subsection (5)(a)(ii)(B), the term “student” means an individual who, during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins:

(i) is a full-time student at an educational institution; or

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term “educational institution” means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(6) The department, by November 1 of each year, shall multiply all the exemptions provided in this section by the inflation factor for that taxable year and round the product to the nearest $10. The resulting adjusted exemptions are effective for that taxable year and shall be used in calculating the tax imposed in 15-30-103.

History: En. Sec. 10, Ch. 181, L. 1933; re-en. Sec. 2295.10, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1941; amd. Sec. 1, Ch. 196, L. 1949; amd. Sec. 1, Ch. 233, L. 1957; amd. Sec. 3, Ch. 253, L. 1959; amd. Sec. 2, Ch. 199, L. 1963; amd. Sec. 1, Ch. 363, L. 1974; R.C.M. 1947, 84-4910(a) thru (e), (i); amd. Sec. 8, Ch. 698, L. 1979; amd. Sec. 3, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 2, Ch. 548, L. 1981; amd. Sec. 3, Ch. 14, Sp. L. July 1992; amd. Sec. 5, Ch. 634, L. 1993 (voided by I.R. No. 112, Nov. 8, 1994).

Cross-References

Information regarding blindness exemption furnished to Department of Justice, 15-30-303.

Capital gains or dividend income exempt — investment in small business investment company, Title 15, ch. 33, part 1.

15-30-113. General definition of dependent. (1) For purposes of 15-30-112, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:

(a) a son or daughter of the taxpayer or a descendant of either;

(b) a stepson or stepdaughter of the taxpayer;

(c) a brother, sister, stepbrother, or stepsister of the taxpayer;

(d) the father or mother of the taxpayer or an ancestor of either;

(e) a stepfather or stepmother of the taxpayer;

(f) a son or daughter of a brother or sister of the taxpayer;

(g) a brother or sister of the father or mother of the taxpayer;

(h) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer;

(i) an individual who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household; or

(j) an individual who:

(i) is a descendant of a brother or sister of the father or mother of the taxpayer;

(ii) for the taxable year of the taxpayer received institutional care required by reason of a physical or mental disability; and

(iii) before receiving such institutional care, was a member of the same household as the taxpayer.

(2) For purposes of 15-30-112 and this section:

(a) the terms "brother" and "sister" include a brother or sister by the half blood;

(b) in determining whether any of the relationships specified in this section exist, a legally adopted child of an individual shall be treated as a child of such individual by blood.

History: En. Sec. 10, Ch. 181, L. 1933; re-en. Sec. 2295.10, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1941; amd. Sec. 1, Ch. 196, L. 1949; amd. Sec. 1, Ch. 233, L. 1957; amd. Sec. 3, Ch. 253, L. 1959; amd. Sec. 2, Ch. 199, L. 1963; amd. Sec. 1, Ch. 363, L. 1974; R.C.M. 1947, 84-4910(f), (g).

15-30-114. Additional exemption for dependent child with a disability. (1) In lieu of the exemption in 15-30-112(5), an exemption for twice the amount allowed for dependents is allowed for each dependent child with a disability.

(2) In order to be eligible for the exemption, a dependent child with a disability must, for the taxable year of the taxpayer, have as the child's principal place of abode the home of the taxpayer and have a permanent disability of great enough severity that it constitutes not less than 50% disability to the body as a whole. An exemption may be allowed for a dependent with a permanent disability after the individual reaches the age of majority if the individual continues to be a dependent.

History: En. 84-4910.1 by Sec. 1, Ch. 500, L. 1977; R.C.M. 1947, 84-4910.1; amd. Sec. 10, Ch. 698, L. 1979; amd. Sec. 14, Ch. 472, L. 1997.

15-30-115. Physician's verification of disability required. A taxpayer claiming the exemption provided for in 15-30-114 shall provide with the taxpayer's income tax statement written documentation by a licensed physician that the disability qualifies under 15-30-114.

History: En. 84-4910.2 by Sec. 2, Ch. 500, L. 1977; R.C.M. 1947, 84-4910.2; amd. Sec. 15, Ch. 472, L. 1997.

15-30-116. Veterans' bonus or military salary — exemptions. (1) All payments made under the World War I bonus law, Korean bonus law, and the veterans' bonus law are hereby exempt from taxation under the income tax laws of the state of Montana, and any income tax which has been or may hereafter be paid on income received from this source shall be considered an overpayment and shall be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(2) The salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana is exempt from state income tax.

History: (1)En. Sec. 1, Ch. 43, L. 1953; amd. Sec. 1, Ch. 227, L. 1957; amd. Sec. 1, Ch. 4, L. 1965; amd. Sec. 169, Ch. 516, L. 1973; Sec. 84-4907.1, R.C.M. 1947; (2)En. Sec. 1, Ch. 326, L. 1975; Sec. 84-4907.2, R.C.M. 1947; R.C.M. 1947, 84-4907.1, 84-4907.2.

Cross-References

Special consideration allowed service personnel and veterans, Art. II, sec. 35, Mont. Const.

15-30-117. Net operating loss — computation. A Montana net operating loss must be determined in accordance with section 172 of the Internal Revenue Code of 1986 (26 U.S.C. 172) or as that section may be labeled or amended except that the net operating loss determined under section 172(c) of the Internal Revenue Code (26 U.S.C. 172(c)) means taxable income, as defined in 15-30-101, computed with the modifications specified in section 172(d) of the Internal Revenue Code (26 U.S.C. 172(d)) as they relate to items provided for in this chapter.

History: En. Sec. 1, Ch. 142, L. 1985; amd. Sec. 15, Ch. 83, L. 1989; amd. Sec. 1, Ch. 20, L. 1991; amd. Sec. 2, Ch. 807, L. 1991; amd. Sec. 6, Ch. 634, L. 1993 (voided by I.R. No. 112, Nov. 8, 1994); amd. Sec. 67, Ch. 42, L. 1997; amd. Sec. 1, Ch. 487, L. 1999.

Cross-References

Corporation license tax — deductions allowed in computing income, 15-31-114.

15-30-118 through 15-30-120 reserved.

15-30-121. Deductions allowed in computing net income. (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954 (26 U.S.C. 161 and 211), or as sections 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

(i) items provided for in 15-30-123;

(ii) state income tax paid;

(iii) premium payments for medical care as provided in subsection (1)(g)(i);

(iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii);

(b) federal income tax paid within the tax year;

(c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:

(i) expenses for household and dependent care services necessary for gainful employment incurred for:

(A) a dependent under 15 years of age for whom an exemption can be claimed;

(B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(C) a spouse who is unable to provide self-care because of physical or mental illness;

(ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(A) household services that are attributable to the care of the qualifying individual; and

(B) care of an individual who qualifies under subsection (1)(c)(i);

(iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:

(A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed $4,800;

(B) expenses for services in the household are deductible under subsection (1)(c)(i) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:

(I) $2,400 in the case of one qualifying individual;

(II) $3,600 in the case of two qualifying individuals; and

(III) $4,800 in the case of three or more qualifying individuals;

(v) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(vi) for purposes of this subsection (1)(c):

(A) married couples shall file a joint return or file separately on the same form;

(B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

(I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

(C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code (now repealed) that were in effect for the tax year ended December 31, 1978;

(e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to the conditions set forth in 15-30-156;

(g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:

(i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:

(A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

(B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996;

(h) light vehicle registration fees, as provided for in 61-3-560 through 61-3-562, paid during the tax year; and

(i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (2).

History: **En. Sec. 6, Ch. 181, L. 1933; re-en. Sec. 2295.6, R.C.M. 1935; amd. Sec. 2, Ch. 167, L. 1947; amd. Sec. 2, Ch. 260, L. 1955; amd. Sec. 1, Ch. 102, L. 1977; amd. Sec. 2, Ch. 574, L. 1977; amd. Sec. 5, Ch. 576, L. 1977; R.C.M. 1947, 84-4906; amd. Sec. 1, Ch. 90, L. 1979; amd. Sec. 1, Ch. 129, L. 1979; amd. Sec. 3, Ch. 480, L. 1981; amd. Sec. 4, Ch. 533, L. 1981; amd. Sec. 20, Ch. 614, L. 1981; amd. Sec. 1, Ch. 118, L. 1983; amd. Sec. 10, Ch. 516, L. 1985; amd. Sec. 8, Ch. 610, L. 1985; amd. Sec. 1, Ch. 613, L. 1985; amd. Sec. 1, Ch. 501, L. 1987; amd. Sec. 11, Ch. 611, L. 1987; amd. Sec. 1, Ch. 613, L. 1991; amd. Sec. 2, Ch. 670, L. 1991; amd. Sec. 6, Ch. 808, L. 1991; amd. Sec. 1, Ch. 565, L. 1993; amd. Sec. 1, Ch. 284, L. 1995; amd. Sec. 68, Ch. 42, L. 1997; amd. Sec. 1, Ch. 218, L. 1997; amd. Secs. 1, 2(2), Ch. 383, L. 1997; amd. Sec. 10, Ch. 515, L. 1999; amd. Sec. 102, Ch. 574, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 574 inserted (1)(i) concerning per capita livestock fees; and made minor changes in style. Amendment effective July 1, 2001.

2000 Amendment by Referendum: Chapter 515, L. 1999, inserted (1)(i) concerning light vehicle registration fees; and made minor changes in style. Amendment effective November 7, 2000.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

15-30-122. Standard deduction. (1) A standard deduction equal to 20% of adjusted gross income is allowed if elected by the taxpayer on a return. The standard deduction is in lieu of all deductions allowed under 15-30-121. The minimum standard deduction is $665, as adjusted under the provisions of subsection (2), or 20% of adjusted gross income, whichever is greater, to a maximum standard deduction of $1,500, as adjusted under the provisions of subsection (2). However, in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as a head of household on the federal income tax return, the minimum standard deduction is $1,330, as adjusted under the provisions of subsection (2), or 20% of adjusted gross income, whichever is greater, to a maximum standard deduction of $3,000, as adjusted under the provisions of subsection (2). The standard deduction may not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married must be made as of the last day of the tax year unless one of the spouses dies during the tax year, in which case the determination must be made as of the date of death.

(2) By November 1 of each year, the department shall multiply both the minimum and the maximum standard deduction for single returns by the inflation factor for that tax year and round the product to the nearest $10. The minimum and maximum standard deduction for joint returns and qualified head of household returns must be twice the amount of the minimum and maximum standard deduction for single returns. The resulting adjusted deductions are effective for that tax year and must be used in calculating the tax imposed in 15-30-103.

History: **En. Sec. 8, Ch. 181, L. 1933; re-en. Sec. 2295.8, R.C.M. 1935; amd. Sec. 1, Ch. 207, L. 1949; amd. Sec. 1, Ch. 187, L. 1953; amd. Sec. 4, Ch. 260, L. 1955; amd. Sec. 1, Ch. 202, L. 1969; amd. Sec. Ch. 357, L. 1971; R.C.M. 1947, 84-4908; amd. Sec. 11, Ch. 698, L. 1979; amd. Sec. 4, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 1, Ch. 516, L. 1981; amd. Sec. 1, Ch. 501, L. 1983; amd. Sec. 1, Ch. 30, L. 1985; amd. Sec. 4, Ch. 14, Sp. L. July 1992; amd. Sec. 7, Ch. 634, L. 1993 (voided by I.R. No. 112, Nov. 8, 1994); amd. Sec. 1, Ch. 435, L. 1995.**

15-30-123. Nondeductible items in computing net income. In computing net income, deductions are not allowed for:

(1) personal, living, or family expenses;

(2) any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(3) any amount expended in restoring property or in making good the exhaustion of the property for which an allowance is or has been made;

(4) premiums paid on any life insurance policy covering the life of any officer or employee or of any person financially interested in any trade or business carried on by the taxpayer when the taxpayer is directly or indirectly a beneficiary under the policy; or

(5) expenses that are associated with the production of exempt or excludable income. This subsection (5) does not apply to the deductibility of federal income taxes paid on income that is excludable or exempt for Montana income tax purposes.

History: En. Sec. 9, Ch. 181, L. 1933; re-en. Sec. 2295.9, R.C.M. 1935; R.C.M. 1947, 84-4909; amd. Sec. 2, Ch. 399, L. 1995.

15-30-124. Credit allowed resident taxpayers for income taxes imposed by foreign states or countries. (1) Subject to the conditions provided in subsections (2) through (5), a resident of this state is allowed a credit against the taxes imposed by this chapter for:

(a) income taxes imposed by and paid to another state or country on income taxable under this chapter; and

(b) the resident's pro rata share of any income tax imposed by and paid to another state or country by an S. corporation of which the resident is a shareholder.

(2) The credit is allowed only for taxes paid to another state or country on income derived from sources within the other state or country that is taxable under the laws of the other state or country regardless of the residence or domicile of the taxpayer.

(3) The credit is not allowed if the other state or country allows residents of this state a credit against the taxes imposed by the other state or country for taxes paid or payable under this chapter.

(4) The allowable credit must be computed by a formula prescribed by the department.

(5) For the purposes of the credit under subsection (1)(b):

(a) "income tax" has the same meaning as provided in Article II of 15-1-601;

(b) the S. corporation must have made and have in effect on the last day of its tax year a valid election under subchapter S. of Chapter 1 of the Internal Revenue Code; and

(c) the credit applies only to taxes paid by the S. corporation on income taxable under this chapter.

History: En. Sec. 2, Ch. 28, L. 1941; amd. Sec. 7, Ch. 253, L. 1959; amd. Sec. 181, Ch. 516, L. 1973; R.C.M. 1947, 84-4937; amd. Sec. 8, Ch. 143, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 143 in (1) at beginning substituted "Subject to the conditions provided in subsections (2) through (5)" for "Subject to the following conditions"; inserted (1)(b) regarding resident's pro rata share of income tax imposed by and paid to another state; in (2) in two places after "state" inserted "or country"; in (3) after "state" inserted "or country"; inserted (5) providing definition, tax election, and conditions for application of tax credit; and made minor changes in style. Amendment effective March 29, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

15-30-125. Credit for energy-conserving investments. There is a credit against tax liability under this chapter as provided in 15-32-109.

History: En. Sec. 2, Ch. 480, L. 1981.

15-30-126. Small business corporation — deduction for donation of computer equipment to schools. A small business corporation, as defined in 15-30-1101, is allowed a deduction equal to the fair market value, not to exceed 30% of the small business corporation's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(1) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(2) the property is not transferred by the donee in exchange for money, other property, or services;

(3) the electing small business corporation receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2); and

(4) the deduction allowed in this section is in lieu of the deduction allowed under 15-30-121 for charitable contributions.

History: En. Sec. 2, Ch. 447, L. 1983; amd. Sec. 3, Ch. 807, L. 1991; amd. Sec. 9, Ch. 634, L. 1993 (voided by I.R. No. 112, Nov. 8, 1994).

15-30-127. Tax deductibility. (1) The amount of contributions made by a small business to its independent liability fund as defined in 33-27-103 is deductible to that small business on its Montana individual income tax return for the taxable year in which the contributions are made to the fund.

(2) Administrative costs under 33-27-117(1), except those paid from the principal of an independent liability fund, are deductible on Montana individual income tax returns for the fiscal year in which they are paid or accrued.

(3) Income on the money, assets, and investments in an independent liability fund as defined in 33-27-103 may be contributed to the fund. If it is not so contributed, it is taxable in accordance with the applicable provisions of this chapter.

History: En. Secs. 9, 11, 14, Ch. 564, L. 1987.

15-30-128. Credit for expense of caring for certain elderly family members. (1) There is a credit against the tax imposed by this chapter for qualified elderly care expenses paid by an individual for the care of a qualifying family member during the taxable year.

(2) A qualifying family member is an individual who:

(a) is related to the taxpayer by blood or marriage;

(b) (i) is at least 65 years of age; or

(ii) has been determined to be disabled by the social security administration; and

(c) has a family income of $15,000 or less for an unmarried individual and $30,000 or less for a married individual for the taxable year.

(3) For purposes of this section, "family income" means, in the case of an individual who is not married, the gross income, including all nontaxable income, of the individual or, in the case of a married individual, the gross income, including all nontaxable income, of the individual and the individual's spouse.

(4) Qualified elderly care expenses include:

(a) payments by the taxpayer for home health agency services, personal care attendant services and care in a long-term care facility, as defined in 50-5-101, that is licensed by the department of public health and human services, homemaker services, adult day care, respite care, or health care equipment and supplies:

(i) provided to the qualifying family member;

(ii) provided by an organization or individual not related to the taxpayer or the qualifying family member; and

(iii) not compensated for by insurance or otherwise;

(b) premiums paid for long-term care insurance coverage for a qualifying family member.

(5) The percentage amount of credit allowable under this section is:

(a) for a taxpayer whose adjusted gross income does not exceed $25,000, 30% of qualified elderly care expenses; or

(b) for a taxpayer whose adjusted gross income exceeds $25,000, the greater of:

(i) 20% of qualified elderly care expenses; or

(ii) 30% of qualified elderly care expenses, less 1% for each $2,000 or fraction of $2,000 by which the adjusted gross income of the taxpayer for the taxable year exceeds $25,000.

(6) The dollar amount of credit allowable under this section is:

(a) reduced by $1 for each dollar of the adjusted gross income over $50,000 for a taxpayer whose adjusted gross income exceeds $50,000;

(b) limited to $5,000 per qualifying family member in a taxable year and to $10,000 total for two or more family members in a taxable year;

(c) prorated among multiple taxpayers who each contribute to qualified elderly care expenses of the same qualified family member in a taxable year in the same proportion that their contributions bear to the total qualified elderly care expenses paid by those taxpayers for that qualified family member.

(7) A deduction or credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under this section. The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the taxpayer has no tax liability.

(8) In the case of a married individual filing a separate return, the percentage amount of credit under subsection (5) and the dollar amount of credit under subsection (6) are limited to one-half of the figures indicated in those subsections.

History: En. Sec. 1, Ch. 469, L. 1989; amd. Sec. 1, Ch. 670, L. 1991; amd. Sec. 47, Ch. 546, L. 1995.

15-30-129. Tax credit for providing disability insurance for employees. There is a credit against the taxes otherwise due under this chapter allowable to an employer for the amount of premiums for disability insurance paid by the employer for his employees. The tax credit must be computed in accordance with the provisions of 15-31-132.

History: En. Sec. 7, Ch. 606, L. 1991.

15-30-130. Credit for day-care facilities. There is a credit against the taxes otherwise due under this chapter allowable to an employer based on the amounts paid or incurred during the tax year by the employer to acquire, construct, reconstruct, renovate, or otherwise improve real property to be used primarily as a day-care facility. The credit must be computed in accordance with the provisions of 15-31-133.

History: En. Sec. 2, Ch. 540, L. 2001.

Compiler's Comments

Effective Date: Section 6, Ch. 540, L. 2001, provided: "[This act] is effective on passage and approval." Approved May 1, 2001.

Retroactive Applicability: Section 7, Ch. 540, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000, and to day-care facilities acquired by an employer and placed in operation after December 31, 2000."

15-30-131. Nonresident and temporary resident taxpayers — adjusted gross income. In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income as provided for in 15-30-111.

History: En. Sec. 7, Ch. 181, L. 1933; re-en. Sec. 2295.7, R.C.M. 1935; amd. Sec. 1, Ch. 28, L. 1937; amd. Sec. 1, Ch. 7, L. 1939; amd. Sec. 1, Ch. 63, L. 1949; amd. Sec. 1, Ch. 17, L. 1951; amd. Sec. 1, Ch. 111, L. 1953; amd. Sec. 3, Ch. 260, L. 1955; amd. Sec. 1, Ch. 237, L. 1963; amd. Sec. 1, Ch. 270, L. 1965; amd. Sec. 168, Ch. 516, L. 1973; R.C.M. 1947, 84-4907; amd. Sec. 1, Ch. 623, L. 1979; amd. Sec. 4, Ch. 480, L. 1981; amd. Sec. 1, Ch. 378, L. 1983; amd. Sec. 1, Ch. 199, L. 1985; amd. Sec. 5, Ch. 14, Sp. L. July 1992; amd. Sec. 10, Ch. 634, L. 1993 (voided by I.R. No. 112, Nov. 8, 1994).

15-30-132. Change from nonresident to resident or vice versa. If a taxpayer changes his status from that of resident to that of nonresident or from that of nonresident to that of resident during the taxable year, he shall file a return. If a resident obtains employment outside the state, income from such employment is taxable in Montana.

History: En. Sec. 15, Ch. 181, L. 1933; re-en. Sec. 2295.15, R.C.M. 1935; amd. Sec. 9, Ch. 260, L. 1955; amd. Sec. 6, Ch. 253, L. 1959; R.C.M. 1947, 84-4915; amd. Sec. 6, Ch. 14, Sp. L. July 1992.

15-30-133. Renumbered 15-30-1102. Sec. 16(3), Ch. 143, L. 2001.

15-30-134. Determination of marital status. For purposes of this chapter:

(1) the determination of whether an individual is married shall be made as of the close of his taxable year, except that if his spouse dies during his taxable year, such determination shall be made as of the time of such death; and

(2) an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

History: En. Sec. 10, Ch. 181, L. 1933; re-en. Sec. 2295.10, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1941; amd. Sec. 1, Ch. 196, L. 1949; amd. Sec. 1, Ch. 233, L. 1957; amd. Sec. 3, Ch. 253, L. 1959; amd. Sec. 2, Ch. 199, L. 1963; amd. Sec. 1, Ch. 363, L. 1974; R.C.M. 1947, 84-4910(h).

15-30-135. Tax on beneficiaries or fiduciaries of estates or trusts. (1) A tax shall be imposed upon either the fiduciaries or the beneficiaries of estates and trusts as hereinafter provided, except to the extent such estates and trusts shall be held for educational, charitable, or religious purposes, which tax shall be levied, collected, and paid annually with respect to the income of estates or of any kind of property held in trust, including:

(a) income received by estates of deceased persons during the period of administration or settlement of the estate;

(b) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

(c) income held for future distribution under the terms of the will or trust; and

(d) income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of a minor, to be held or distributed as the court may direct.

(2) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether the fiduciary or the beneficiaries are taxable with reference to the income of such estate or trust. In cases under subsections (a) and (d) of subsection (1), the fiduciary shall include in the return a statement of each beneficiary's distributive share of net income, whether or not distributed before the close of the taxable year for which the return is made.

(3) In cases under subsections (a), (b), and (c) of subsection (1), the tax shall be imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and shall be paid by the fiduciary. If the taxpayer's net income for the taxable year of the estate or trust is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal or calendar year shall be computed upon the basis on which such beneficiary's net income is computed. In such cases, a beneficiary not a resident shall be taxable with respect to his income derived through such estate or trust only to the extent provided in 15-30-131 for individuals other than residents.

(4) The fiduciary of a trust created by an employer as a part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of his employees, to which contributions are made by such employer or employees, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under this section, but any amount contributed to such fund by the employer and all earnings of such fund shall be included in computing the income of the distributee in the year in which distributed or made available to him.

(5) Where any part of the income of a trust other than a testamentary trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified relating to the so-called "charitable contribution" deduction) or to the payment of premiums upon policies of life insurance under which the grantor is the beneficiary, such part of the income of the trust shall be included in computing the net income of the grantor.

History: En. Sec. 12, Ch. 181, L. 1933; re-en. Sec. 2295.12, R.C.M. 1935; amd. Sec. 6, Ch. 260, L. 1955; R.C.M. 1947, 84-4912; amd. Sec. 1, Ch. 2, L. 1983; amd. Sec. 1, Ch. 260, L. 1983.

15-30-136. Computation of income of estates or trusts — exemption. (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the tax year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision of the state, but excluding interest income from obligations of:

(i) the United States government or the state of Montana;

(ii) a school district; or

(iii) a county, municipality, district, or other political subdivision of the state;

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

(e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954, as amended;

(f) gross profit from trade or business; and

(g) refunds recovered on federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability.

(2) In computing net income, there are allowed as deductions:

(a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code of 1954, as amended;

(b) taxes paid or accrued within the tax year, including but not limited to federal income tax, but excluding Montana income tax;

(c) that fiduciary's portion of depreciation or depletion that is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code of 1954, as amended;

(d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code of 1954, as amended;

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code of 1954, as amended;

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code of 1954, as amended;

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code of 1954, as amended, except estates may not claim losses that are deductible on the decedent's final return;

(h) Montana income tax refunds or tax refund credits.

(3) The following additional deductions are allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the tax year currently required to be distributed to beneficiaries for the year;

(b) any other amounts properly paid or credited or required to be distributed for the tax year.

(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and (6).

History: En. Secs. 2, 3(1), (2), Ch. 260, L. 1983; amd. Sec. 2, Ch. 464, L. 1985; amd. Sec. 2, Ch. 657, L. 1987; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 4, Ch. 807, L. 1991; amd. Sec. 3, Ch. 823, L. 1991; amd. Sec. 7, Ch. 14, Sp. L. July 1992; amd. Sec. 1, Ch. 103, L. 1993; amd. Sec. 8, Ch. 9, Sp. L. May 2000.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 at end of (2)(e) deleted "if the expenses were not claimed as a deduction in the determination of Montana inheritance tax"; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

15-30-137. Determination of tax of estates and trusts. The amount of tax must be determined from taxable income of an estate or trust in the same manner as the tax on taxable income of individuals, by applying the rates contained in 15-30-103. Credits allowed individuals under Title 15, chapter 30, also apply to estates and trusts when applicable.

History: En. Sec. 3(3), Ch. 260, L. 1983; amd. Sec. 11, Ch. 634, L. 1993 (voided by I.R. No. 112, Nov. 8, 1994).

15-30-138. Estates and trusts tax remedies. Remedies available for the administration, enforcement, and collection of individual income taxes also apply to estates and trusts.

History: En. Sec. 3(4), Ch. 260, L. 1983.

15-30-139 and 15-30-140 reserved.

15-30-141. Tax as personal debt. Every tax imposed by this chapter and all increases, interest, and penalties thereon shall be from the time they are due and payable a personal debt from the person or fiduciary liable to pay the same to the state.

History: En. Sec. 4, Ch. 181, L. 1933; re-en. Sec. 2295.4, R.C.M. 1935; R.C.M. 1947, 84-4904.

15-30-142. Returns and payment of tax — penalty and interest — refunds — credits. (1) For both resident and nonresident taxpayers, each single individual and each married individual not filing a joint return with a spouse and having a gross income for the tax year of more than $1,500, as adjusted under the provisions of subsection (7), and married individuals not filing separate returns and having a combined gross income for the tax year of more than $3,000, as adjusted under the provisions of subsection (7), are liable for a return to be filed on forms and according to rules that the department may prescribe. The gross income amounts referred to in the preceding sentence must be increased by $800, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under 15-30-112(3) and (4).

(2) In accordance with instructions set forth by the department, each taxpayer who is married and living with husband or wife and is required to file a return may, at the taxpayer's option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax must be computed on the aggregate taxable income and the liability with respect to the tax is joint and several. If a joint return has been filed for a tax year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department consents.

(3) If a taxpayer is unable to make the taxpayer's own return, the return must be made by an authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld, as provided by 15-30-202, and any payment made by reason of an estimated tax return provided for in 15-30-241. However, the tax computed must be greater by $1 than the amount withheld and paid by estimated return as provided in this chapter. If the amount of tax withheld and the payment of estimated tax exceed by more than $1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount paid, the excess must be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added as provided in 15-1-216. In that case, there may not be a penalty because of the understatement if the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

(7) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the tax year. These adjusted amounts are effective for that tax year, and persons who have gross incomes less than these adjusted amounts are not required to file a return.

(8) Individual income tax forms distributed by the department for each tax year must contain instructions and tables based on the adjusted base year structure for that tax year.

History: En. Sec. 14, Ch. 181, L. 1933; re-en. Sec. 2295.14, R.C.M. 1935; amd. Sec. 1, Ch. 34, L. 1949; amd. Sec. 8, Ch. 260, L. 1955; amd. Sec. 2, Ch. 227, L. 1957; amd. Sec. 5, Ch. 253, L. 1959; amd. Sec. 1, Ch. 201, L. 1963; amd. Sec. 1, Ch. 347, L. 1969; amd. Sec. 1, Ch. 450, L. 1973; amd. Sec. 171, Ch. 516, L. 1973; amd. Sec. 1, Ch. 159, L. 1977; R.C.M. 1947, 84-4914(part); amd. Sec. 12, Ch. 698, L. 1979; amd. Secs. 5, 6, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 1, Ch. 4, L. 1981; amd. Sec. 2, Ch. 477, L. 1981; amd. Sec. 3, Ch. 548, L. 1981; amd. Sec. 8, Ch. 14, Sp. L. July 1992; amd. Sec. 12, Ch. 634, L. 1993 (voided by I.R. No. 112, Nov. 8, 1994); amd. Sec. 2, Ch. 435, L. 1995; amd. Sec. 1, Ch. 67, L. 1999; amd. Sec. 7, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.
Failure to file return — show cause hearing, 15-30-316.
Penalties for violation of chapter, 15-30-321.
Penalty for failure to pay deficiency, 15-30-323.
Offset of tax refunds for debt due to state, 17-4-105.

15-30-143. Return of fiduciary. Every fiduciary (except receivers appointed by authority of law in possession of only part of the property of a taxpayer) shall make a return for the individual or estate or trust from whom he acts. Fiduciaries required to make returns under this section shall be subject to all the provisions of this chapter which apply to taxpayers.

History: En. Sec. 17, Ch. 181, L. 1933; re-en. Sec. 2295.17, R.C.M. 1935; amd. Sec. 10, Ch. 260, L. 1955; R.C.M. 1947, 84-4917.

15-30-144. Time for filing — extensions of time. (1) A return must be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return must be made on or before the 15th day of April following the close of the calendar year. Each return must set forth those facts that the department considers necessary for the proper enforcement of this chapter. There must be annexed to the return the affidavit or affirmation of the persons making the return to the effect that the statements contained in the return are true. Blank forms of return must be furnished by the department upon application, but failure to secure the form does not relieve any taxpayer of the obligation to make any return required under this chapter. Each taxpayer liable for a tax under this chapter shall pay a minimum tax of $1.

(2) An automatic 4-month extension of time for filing a return is allowed, provided that:

(a) on or before the due date of the return, the taxpayer has applied with the internal revenue service for a 4-month extension of time for filing the taxpayer's federal individual income tax return for the same tax year. The extension of time for filing a return is not an extension of time for the payment of taxes.

(b) the taxpayer has paid by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability.

(3) An additional 2-month extension of time for filing a return is automatically allowed provided that the taxpayer has applied with the internal revenue service for an additional 2-month extension of time for filing the taxpayer's federal individual income tax return for the same tax year and has satisfied the requirements of subsection (2)(b). The extension of time for filing a return is not an extension of time for the payment of taxes.

History: En. Sec. 29, Ch. 181, L. 1933; re-en. Sec. 2295.19, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1935; amd. Sec. 172, Ch. 516, L. 1973; amd. Sec. 1, Ch. 340, L. 1975; R.C.M. 1947, 84-4919; amd. Sec. 1, Ch. 169, L. 1981; amd. Sec. 1, Ch. 796, L. 1991; amd. Sec. 1, Ch. 560, L. 1995; amd. Sec. 1, Ch. 26, L. 1999.

Cross-References

Interest payable for time filing date extended, 15-30-323.
Certified copies of returns, 15-30-331.

15-30-145. Revision of return by department — statute of limitations — examination of records and persons. (1) If, in the opinion of the department, any return of a taxpayer is in any essential respect incorrect, it may revise the return.

(2) If a taxpayer does not file a return as required under this chapter, the department may, at any time, audit the taxpayer or estimate the taxable income of the taxpayer from any information in its possession and, based upon the audit or estimate, assess the taxpayer for the taxes, penalties, and interest due the state.

(3) Except as provided in subsections (2) and (4), the amount of tax due under any return may be determined by the department within 5 years after the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing. For the purposes of 15-30-147 and this section, a tax return due under this chapter and filed before the last day prescribed by law or rule is considered to be filed on the last day prescribed for filing.

(4) If a taxpayer, with intent to evade the tax, purposely or knowingly files a false or fraudulent return that violates a provision of this chapter, the amount of tax due may be determined at any time after the return is filed and the tax may be collected at any time after it becomes due.

(5) The department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, may also examine or cause to have examined by any agent or representative designated by it for that purpose any books, papers, or records of memoranda bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or any officer or employee of the person or the attendance of any person having knowledge in the premises and may take testimony and require proof material for its information, with power to administer oaths to the person or persons.

History: En. Sec. 20, Ch. 181, L. 1933; re-en. Sec. 2295.20, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1955; amd. Sec. 173, Ch. 516, L. 1973; R.C.M. 1947, 84-4920; amd. Sec. 2, Ch. 648, L. 1979; amd. Sec. 1, Ch. 520, L. 1993.

Cross-References

Failure to file return — show cause hearing, 15-30-316.

15-30-146. Tolling of statute of limitations. The running of the statute of limitations provided for under 15-30-145 shall be suspended during any period that the federal statute of limitations for collection of federal income tax has been suspended by written agreement signed by the taxpayer or when the taxpayer has instituted an action which has the effect of suspending the running of the federal statute of limitations and for 1 additional year. If the taxpayer fails to file a record of changes in federal taxable income or an amended return as required by 15-30-304, the statute of limitations shall not apply until 5 years from the date the federal changes become final or the amended federal return was filed. If the taxpayer omits from gross income an amount properly includable therein which is in excess of 25% of the amount of adjusted gross income stated in the return, the statute of limitations shall not apply for 2 additional years from the time specified in 15-30-145.

History: En. Sec. 2, Ch. 103, L. 1955; amd. Sec. 1, Ch. 61, L. 1967; R.C.M. 1947, 84-4920.1.

15-30-147. Application for revision — appeal. An application for revision may be filed with the department by a taxpayer within 5 years from the last day prescribed for filing the return as provided in 15-30-145(3), regardless of whether the return was filed on or after the last day prescribed for filing. If the department has revised a return pursuant to 15-30-145(3), the taxpayer may revise the same return until the liability for that tax year is finally determined. If the taxpayer is not satisfied with the action taken by the department, the taxpayer may appeal to the state tax appeal board.

History: En. Sec. 22, Ch. 181, L. 1933; re-en. Sec. 2295.22, R.C.M. 1935; amd. Sec. 1, Ch. 58, L. 1955; amd. Sec. 2, Ch. 201, L. 1963; amd. Sec. 102, Ch. 405, L. 1973; amd. Sec. 174, Ch. 516, L. 1973; R.C.M. 1947, 84-4922; amd. Sec. 2, Ch. 520, L. 1993.

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

15-30-148. Judicial review. (1) The determination of the state tax appeal board may be reviewed in the district court for Lewis and Clark County or the county in which the taxpayer resides or in which the taxpayer's principal office or place of business is located by a complaint filed by the taxpayer or the department within 60 days after the receipt of notice of the determination. Proceedings for review must be otherwise as specified under the Montana Administrative Procedure Act.

(2) The remedies provided by this chapter for the collection of the tax must be stayed, and an assessment, distraint, or proceedings in court for collection of the taxes may not be made, begun, or prosecuted until 90 days after the court action is finally determined. From any determination of the court, an appeal to the supreme court may be taken by either party.

History: En. Sec. 1, Ch. 212, L. 1957; amd. Sec. 103, Ch. 405, L. 1973; amd. Sec. 6, Ch. 155, L. 1977; R.C.M. 1947, 84-4923.1; amd. Sec. 8, Ch. 811, L. 1991; amd. Sec. 1, Ch. 214, L. 1993.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Review of disapproval of Department to refund overpayment of tax, 15-1-503.

15-30-149. Credits and refunds — period of limitations. (1) If the department discovers from the examination of a return or upon claim duly filed by a taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment must be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of the excess must be refunded to the taxpayer.

(2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by 15-30-146 and 15-30-147, the taxpayer files a claim or the department determines there has been an overpayment.

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the taxable year of the net operating loss if that period expires later than 5 years from the due date of the return for the year to which the net operating loss is carried back.

(3) Within 6 months after a claim for refund is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund must be

made to the taxpayer within 60 days after the claim is approved. If the claim is disallowed, the department shall notify the taxpayer and a review of the determination of the department may be pursued as provided in 15-1-211.

(4) Interest is allowed on overpayments at the same rate as charged on delinquent taxes. Interest is payable from the due date of the return or from the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment is the date on which the return for the taxable year was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the succeeding taxable year. Interest does not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. Interest is not allowed if:

(a) the overpayment is refunded within 45 days from the date the return is due or the date the return is filed, whichever date is later;

(b) the overpayment results from the carryback of a net operating loss; or

(c) the amount of interest is less than $1.

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to which interest is allowable.

History: En. Sec. 1, Ch. 138, L. 1957; amd. Sec. 3, Ch. 199, L. 1963; amd. Sec. 192, Ch. 516, L. 1973; R.C.M. 1947, 84-4956; amd. Sec. 1, Ch. 113, L. 1979; amd. Sec. 1, Ch. 589, L. 1981; amd. Sec. 9, Ch. 811, L. 1991; amd. Sec. 3, Ch. 520, L. 1993; amd. Sec. 8, Ch. 572, L. 1995.

15-30-150. *(Temporary)* **Voluntary checkoff for nongame wildlife programs.** (1) Each individual taxpayer who is required to file an income tax return under Title 15, chapter 30, may contribute to the funding of nongame wildlife programs in Montana by marking the appropriate box on the state income tax return.

(2) The department shall include on each Montana state individual income tax return form a clear and conspicuous provision by which the taxpayer may indicate a contribution to nongame wildlife programs. The provision must be in substantially the following form:

Montana nongame wildlife funding. Check the appropriate blank if you wish to contribute, in addition to your existing tax liability, ___$5, ___$10, or ___(specify an amount) to fund nongame wildlife programs in Montana. If a joint return, check the appropriate blank if your spouse wishes to contribute, in addition to your existing tax liability, ___$5, ___$10, or ___(specify an amount) for the same purpose.

(3) Money received under this section, after the department has deducted the administrative charge provided for in 15-30-153, must be deposited in the nongame wildlife account established by 87-5-121. *(Terminates on occurrence of contingency—secs. 1, 2, Ch. 321, L. 1999.)*

History: En. Sec. 3, Ch. 627, L. 1983; amd. Sec. 1, Ch. 436, L. 1985; amd. Sec. 3, Ch. 581, L. 1993.

Compiler's Comments

Contingent Termination: Section 12, Ch. 581, L. 1993, provided: "A voluntary income tax checkoff created in 15-30-150, 15-30-152, or 15-30-155 terminates on January 1 of the first tax year following the 2 immediately preceding tax years in which the voluntary checkoff raises less than $20,000 in each of those 2 tax years."

Sections 1 and 2, Ch. 321, L. 1999, amended sec. 12, Ch. 581, L. 1993, and sec. 2, Ch. 12, L. 1995, respectively, by reducing from $20,000 to $10,000 the threshold amount that triggers termination of the tax checkoff in this section. Effective April 16, 1999.

15-30-151. Agriculture in Montana schools program account — administration. (1) There is an agriculture in Montana schools program account in the state special revenue fund provided for in 17-2-102.

(2) All money collected under 15-30-152 must be deposited in the account.

(3) Money in the account must be used by the department of agriculture to provide funding for developing and presenting, through the joint efforts of the United States department of agriculture, educators at all levels, and representatives of agricultural organizations statewide and nationwide, an educational program that will provide young people with a better

understanding of the crucial role of agriculture in all aspects of society and of how Montana agriculture relates to the rest of the world.

History: **En. Sec. 1, Ch. 634, L. 1985.**

15-30-152. Voluntary checkoff for agriculture in Montana schools program. (1) Each individual taxpayer who is required to file an income tax return under Title 15, chapter 30, may contribute to the funding of the agriculture in Montana schools program by marking an appropriate box on the state income tax return.

(2) The department shall include on each Montana state individual income tax return form a clear and conspicuous provision by which the taxpayer may indicate a contribution to the agriculture in Montana schools program. The contribution may be made from the amount to be refunded to the taxpayer or, if no refund is due, must be in addition to the amount of tax required to be paid. The provision must be in substantially the following form:

Check the appropriate blank if you wish to contribute ___ $5, ___ $10, ___ $20, or ___ (specify an amount) of your tax refund, or add such amount to your tax payment, to fund the agriculture in Montana schools program. If a joint return, check the appropriate blank if your spouse wishes to designate ___ $5, ___ $10, ___ $20, or ___ (specify an amount) for the same purpose.

(3) Money received under this section must be deposited in the agriculture in Montana schools program account established by 15-30-151 after the department has deducted the amount necessary for the department to administer this section as provided in 15-30-153.

History: **En. Sec. 2, Ch. 634, L. 1985; amd. Sec. 4, Ch. 581, L. 1993.**

15-30-153. Funding for administration of special revenue accounts. (1) The department shall charge any special revenue account that is funded by means of an income tax checkoff the actual and necessary cost to create the special revenue account and to place the checkoff on the income tax return.

(2) In addition to the charges in subsection (1), the department shall charge each special revenue account funded by means of an income tax checkoff the actual expenses necessary to administer the account. The department's charges may not exceed $3,000 for a tax year.

(3) All charges collected pursuant to subsections (1) and (2) must be deposited in the state general fund.

History: **En. Secs. 1, 2, Ch. 581, L. 1993; amd. Sec. 8, Ch. 422, L. 1997.**

15-30-154 reserved.

15-30-155. *(Temporary)* **Voluntary checkoff for child abuse and neglect prevention program.** (1) Each individual taxpayer who is required to file an income tax return under this chapter and who is entitled to a refund may contribute to the child abuse and neglect prevention program provided for in 52-7-101, by marking the appropriate box on the state income tax return.

(2) Each Montana state individual income tax return form must contain a provision for indicating a contribution to the child abuse and neglect prevention program in substantially the following form:

Child abuse and neglect prevention program. Check this box if you wish to designate $5 ___, $10 ___, or more ___ (indicate amount) of your tax refund to help fund the child abuse and neglect prevention program in Montana. On a joint return, check the corresponding box for your spouse if your spouse wishes to contribute $5 ___, $10 ___, or more ___ (indicate amount) of the refund for the same purpose.

(3) Money received under this section must be deposited in the children's trust fund account, created under 52-7-102, after the department has deducted the amount necessary for the department to administer this section as provided in 15-30-153. *(Terminates on occurrence of contingency—secs. 1, 2, Ch. 321, L. 1999.)*

History: **En. Sec. 9, Ch. 610, L. 1985; amd. Sec. 5, Ch. 581, L. 1993.**

Compiler's Comments

Contingent Termination: Section 12, Ch. 581, L. 1993, provided: "A voluntary income tax checkoff created in 15-30-150, 15-30-152, or 15-30-155 terminates on January 1 of the first tax year following the 2 immediately preceding tax years in which the voluntary checkoff raises less than $20,000 in each of those 2 tax years."

Sections 1 and 2, Ch. 321, L. 1999, amended sec. 12, Ch. 581, L. 1993, and sec. 2, Ch. 12, L. 1995, respectively, by reducing from $20,000 to $10,000 the threshold amount that triggers termination of the tax checkoff in this section. Effective April 16, 1999.

15-30-156. Deduction for contributions to child abuse and neglect prevention program. A taxpayer filing an individual income tax return who does not elect to take the standard deduction provided for in 15-30-122 may, in computing net income, claim a deduction for the payment of a contribution to the child abuse and neglect prevention program as follows:

(1) If the taxpayer paid a contribution in the taxable year for which the return is filed, he may deduct the amount of the contribution paid during that year, unless the amount was deducted as provided in subsection (2).

(2) If the taxpayer encloses a check or other order to pay money as a contribution with the timely filing of a tax return, in accordance with 15-30-144, he may elect to take a deduction for the amount of the contribution and apply the deduction in the taxable year for which he is filing the return.

History: En. Sec. 10, Ch. 610, L. 1985.

15-30-157. Deposit of deductible contributions. (1) All money received under 15-30-156 must be deposited in the children's trust fund account established in 52-7-102.

(2) The department of revenue shall immediately forward for deposit in the children's trust fund account all checks and other orders of payment made as contributions under 15-30-156. The department may make no deductions for administrative expenses in the handling of such direct payments to the child abuse and neglect prevention program.

History: En. Sec. 11, Ch. 610, L. 1985.

15-30-158. Terminated. Sec. 12, Ch. 808, L. 1991.

History: En. Sec. 7, Ch. 808, L. 1991; amd. Sec. 6, Ch. 581, L. 1993.

15-30-159. Terminated. Sec. 12, Ch. 808, L. 1991.

History: En. Sec. 8, Ch. 808, L. 1991.

15-30-160. Terminated. Sec. 12, Ch. 808, L. 1991.

History: En. Sec. 9, Ch. 808, L. 1991.

15-30-161. Purpose. The purpose of 15-30-162 is to allow individuals, estates, and trusts, including those owning an interest in partnerships and in small business corporations defined in 15-30-1101, to take the investment credit as provided for in 15-30-162 in order to stimulate capital investment by the small business sector.

History: En. 84-4960 by Sec. 1, Ch. 412, L. 1977; R.C.M. 1947, 84-4960; amd. Sec. 1, Ch. 111, L. 1979; amd. Sec. 1, Ch. 520, L. 1981; amd. Sec. 5, Ch. 807, L. 1991.

15-30-162. Investment credit. (1) There is allowed as a credit against the tax imposed by 15-30-103 a percentage of the credit allowed with respect to certain depreciable property under section 38 of the Internal Revenue Code of 1954 (26 U.S.C. 38) or as that section may be renumbered or amended. However, rehabilitation costs as set forth under section 46 of the Internal Revenue Code of 1954 (26 U.S.C. 46), or as that section may be renumbered or amended, are not to be included in the computation of the investment credit. The credit is allowed for the purchase and installation of certain qualified property defined by section 38 of the Internal Revenue Code of 1954 (26 U.S.C. 38), as amended, if the property meets all of the following qualifications:

(a) it was placed in service in Montana; and

(b) it was used for the production of Montana adjusted gross income.

(2) The amount of the credit allowed for the taxable year is 5% of the amount of credit determined under section 46 of the Internal Revenue Code of 1954 (26 U.S.C. 46) or as that section may be renumbered or amended.

(3) Notwithstanding the provisions of subsection (2), the investment credit allowed for the taxable year may not exceed the taxpayer's tax liability for the taxable year or $500, whichever is less.

(4) If property for which an investment credit is claimed is used both inside and outside this state, only a portion of the credit is allowed. The credit must be apportioned according to a fraction the numerator of which is the number of days during the taxable year the property was

located in Montana and the denominator of which is the number of days during the taxable year the taxpayer owned the property. The investment credit may be applied only to the tax liability of the taxpayer who purchases and places in service the property for which an investment credit is claimed. The credit may not be allocated between spouses unless the property is used by a partnership or small business corporation of which they are partners or shareholders.

(5) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code of 1954 (26 U.S.C. 47) or as that section may be renumbered or amended.

History: En. 84-4961 by Sec. 2, Ch. 412, L. 1977; R.C.M. 1947, 84-4961(part); amd. Sec. 2, Ch. 111, L. 1979; amd. Sec. 2, Ch. 422, L. 1981; amd. Sec. 2, Ch. 520, L. 1981; amd. Sec. 1, Ch. 704, L. 1983; amd. Sec. 69, Ch. 42, L. 1997.

Cross-References

Corporate investment credit, 15-31-123.

15-30-163. Credit for contributions to university system or private college foundations. (1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, is allowed a tax credit against taxes imposed by 15-30-103 or 15-31-101 in an amount equal to 10% of the aggregate amount of charitable contributions made by the taxpayer during the year to any of the general endowment funds of the Montana university system foundations or a general endowment fund of a Montana private college or its foundation. The maximum credit that a taxpayer may claim in a year under this section is $500. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.

(3) (a) For the purposes of this section, "foundation" means a nonprofit organization that is created exclusively for the benefit of any unit of the Montana university system or a Montana private college and that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

(b) For the purposes of this section, "Montana private college" means a nonprofit private educational institution:

(i) whose main campus and primary operations are within the state; and

(ii) that offers baccalaureate degree level education and is accredited for that purpose by a national or regional accrediting agency recognized by the board of regents of higher education.

History: En. Sec. 1, Ch. 542, L. 1991; amd. Sec. 1, Ch. 152, L. 1995.

15-30-164. Credit for alternative fuel motor vehicle conversion. (1) (a) Except as provided in subsection (1)(b), an individual, a corporation, a partnership, or a small business corporation as defined in 15-30-1101 is allowed a tax credit against taxes imposed by 15-30-103 or 15-31-101 for equipment and labor costs incurred to convert a motor vehicle licensed in Montana to operate on alternative fuel.

(b) A seller of alternative fuel may not receive a credit for converting its own vehicles to the alternative fuel that it sells.

(2) The maximum credit a taxpayer may claim in a year under this section is an amount equal to 50% of the equipment and labor costs incurred but the credit may not exceed:

(a) $500 for conversion of a motor vehicle with a gross weight of 10,000 pounds or less; or

(b) $1,000 for conversion of a motor vehicle with a gross vehicle weight over 10,000 pounds.

(3) For the purposes of this section, "alternative fuel" means:

(a) natural gas;

(b) liquefied petroleum gas;

(c) liquefied natural gas;

(d) hydrogen;

(e) electricity; or

(f) any other fuel if at least 85% of the fuel is methanol, ethanol or other alcohol, ether, or any combination of them.

(4) (a) The credit allowed under this section may not exceed the taxpayer's income tax liability.

(b) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the conversion is made, as determined by the taxpayer's accounting method.

History: **En. Sec. 1, Ch. 617, L. 1993.**

15-30-165. *(Temporary)* **Qualified endowments credit — definitions — rules.** For the purposes of 15-30-166, the following definitions apply:

(1) Subject to subsection (3), "planned gift" means an irrevocable contribution to a permanent endowment held by a tax-exempt organization, or for a tax-exempt organization, when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:

(a) charitable remainder unitrusts, as defined by 26 U.S.C. 664;

(b) charitable remainder annuity trusts, as defined by 26 U.S.C. 664;

(c) pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);

(d) charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);

(e) charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);

(f) charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(g) deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(h) charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B);

(i) paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

(2) (a) "Qualified endowment" means a permanent, irrevocable fund that is held by a Montana incorporated or established organization that:

(i) is a tax-exempt organization under 26 U.S.C. 501(c)(3); or

(ii) is a bank or trust company, as defined in Title 32, chapter 1, part 1, that is holding the fund on behalf of a tax-exempt organization.

(b) For the purposes of sections 15-30-165 through 15-30-167, the affordable housing revolving loan account established in 90-6-133 is considered to be a qualified endowment.

(3) (a) A contribution using a technique described in subsection (1)(a) or (1)(b) is not a planned gift unless the trust agreement provides that the trust may not terminate and the beneficiaries' interest in the trust may not be assigned or contributed to the qualified endowment sooner than the earlier of:

(i) the date of death of the beneficiaries; or

(ii) 5 years from the date of the contribution.

(b) A contribution using the technique described in subsection (1)(g) is not a planned gift unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables adopted by rule by the department in effect on the date of the contribution.

(c) A contribution using a technique described in subsection (1)(f) or (1)(g) is not a planned gift unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the qualified endowment sooner than the earlier of:

(i) the date of death of the annuitant or annuitants; or

(ii) 5 years after the date of the contribution.

(4) The department shall adopt rules to prepare life expectancy tables that are derived from the actuarial tables contained in the most recent Publication 1457 by the internal revenue service. *(Subsection (2)(b) terminates December 31, 2004—sec. 7, Ch. 411, L. 2001; section terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)*

History: **En. Sec. 1, Ch. 537, L. 1997; amd. Sec. 1, Ch. 226, L. 2001; amd. Sec. 3, Ch. 411, L. 2001.**

Compiler's Comments

2001 Amendments — Composite Section: Chapter 226 at beginning of definition of planned gift inserted "Subject to subsection (3)"; inserted (3) providing that contributions using certain techniques are not considered planned gifts; inserted (4) requiring rulemaking for the preparation of life expectancy tables; and made minor changes in style. Amendment to subsections (1) through (3) effective October 1, 2001. Amendment to subsection (4), for purposes of promulgating administrative rules, effective April 12, 2001.

Chapter 411 inserted (2)(b) concerning affordable housing revolving loan account as qualified endowment; and made minor changes in style. Amendment effective April 28, 2001, and terminates December 31, 2004.

Extension of Termination Date: Section 5, Ch. 226, L. 2001, amended sec. 9, Ch. 537, L. 1997, by extending the termination date imposed by Ch. 537 to December 31, 2007.

Applicability: Section 8, Ch. 226, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001, and to contributions to qualified endowments made after December 31, 2001."

Retroactive Applicability: Section 6, Ch. 411, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

15-30-166. *(Temporary)* **Credit for contributions to qualified endowment.** (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-103 or 15-31-101 in an amount equal to 40% of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the taxpayer during the year to any qualified endowment. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is $10,000. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-30-121(1) or 15-30-136(2).

(3) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. *(Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)*

History: En. Sec. 2, Ch. 537, L. 1997; amd. Sec. 2, Ch. 226, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 226 near middle of first sentence of (1) after "equal to" substituted "40% of the present value" for "50% of the present value". Amendment effective October 1, 2001.

Extension of Termination Date: Section 5, Ch. 226, L. 2001, amended sec. 9, Ch. 537, L. 1997, by extending the termination date imposed by Ch. 537 to December 31, 2007.

Applicability: Section 8, Ch. 226, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001, and to contributions to qualified endowments made after December 31, 2001."

15-30-167. *(Temporary)* **Beneficiaries of estates — credit for contribution to qualified endowment.** A contribution to a qualified endowment, as defined in 15-30-165, by an estate qualifies for the credit provided in 15-30-166 if the contribution is a planned gift or in 15-31-161 if the contribution is an outright gift to a qualified endowment. Any credit not used by the estate may be attributed to each beneficiary of the estate in the same proportion used to report the beneficiary's income from the estate for Montana income tax purposes. The maximum amount of credit that a beneficiary may claim is $10,000, subject to the limitation in 15-30-166(2), and the credit must be claimed in the year in which the contribution is made. The credit may not be carried forward or carried back. *(Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)*

History: En. Sec. 5, Ch. 537, L. 1997.

Compiler's Comments

Extension of Termination Date: Section 5, Ch. 226, L. 2001, amended sec. 9, Ch. 537, L. 1997, by extending the termination date imposed by Ch. 537 to December 31, 2007.

15-30-168. Qualified research tax credit. There is a credit against taxes otherwise due under this chapter allowable for qualified research. The credit must be computed and administered as provided in 15-31-150.

History: En. Sec. 2, Ch. 444, L. 1999.

15-30-169 reserved.

15-30-170. Void. I.R. No. 112, Nov. 8, 1994.

History: En. Sec. 8, Ch. 634, L. 1993.

15-30-171. Residential property tax credit for elderly — definitions. As used in 15-30-171 through 15-30-179, the following definitions apply:

(1) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(2) "Claimant" means a person who is eligible to file a claim under 15-30-172.

(3) "Department" means the department of revenue.

(4) "Gross household income" means all income received by all individuals of a household while they are members of the household.

(5) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's-length transaction with the landlord.

(6) "Homestead" means:

(a) a single-family dwelling or unit of a multiple-unit dwelling that is subject to property taxes in Montana and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling; or

(b) a single-family dwelling or unit of a multiple-unit dwelling that is rented from a county or municipal housing authority as provided in Title 7, chapter 15.

(7) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(8) "Household income" means the amount obtained by subtracting $6,300 from gross household income.

(9) (a) "Income" means, except as provided in subsection (9)(b), federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

(i) the amount of any pension or annuity, including Railroad Retirement Act benefits and veterans' disability benefits;

(ii) the amount of capital gains excluded from adjusted gross income;

(iii) alimony;

(iv) support money;

(v) nontaxable strike benefits;

(vi) cash public assistance and relief;

(vii) interest on federal, state, county, and municipal bonds; and

(viii) all payments received under federal social security except social security income paid directly to a nursing home.

(b) For the purposes of this subsection (9), income is reduced by the taxpayer's basis.

(10) "Property tax billed" means taxes levied against the homestead, including special assessments and fees but excluding penalties or interest during the claim period.

(11) "Rent-equivalent tax paid" means 15% of the gross rent.

History: En. Sec. 1, Ch. 584, L. 1981; amd. Sec. 1, Ch. 134, L. 1983; amd. Sec. 1, Ch. 605, L. 1983; amd. Sec. 1, Ch. 27, L. 1987; amd. Sec. 1, Ch. 559, L. 1989; amd. Sec. 1, Ch. 693, L. 1989; amd. Sec. 3, Ch. 612, L. 1991; amd. Sec. 1, Ch. 543, L. 1997; amd. Sec. 1, Ch. 445, L. 1999.

15-30-172. Residential property tax credit for elderly — eligibility. (1) In order to be eligible to make a claim under 15-30-171 through 15-30-179, an individual:

(a) must have reached age 62 or older during the claim period for which relief is sought;

(b) must have resided in Montana for at least 9 months of that period;

(c) must have occupied one or more dwellings in Montana as an owner, renter, or lessee for at least 6 months of the claim period; and

(d) must have less than $45,000 of gross household income.

(2) A person is not disqualified as a claimant if the person changes residences during the claim period, provided that the person occupies one or more dwellings in Montana as an owner, renter, or lessee for at least 6 months during the claim period.

History: En. Sec. 2, Ch. 584, L. 1981; amd. Sec. 2, Ch. 27, L. 1987; amd. Sec. 2, Ch. 543, L. 1997; amd. Sec. 2, Ch. 547, L. 1999.

15-30-173. Residential property tax credit for elderly — disallowance or adjustment of certain claims. (1) A claim is disallowed if the department finds that the claimant received title to his homestead primarily for the purpose of receiving benefits under 15-30-171 through 15-30-179.

(2) When the landlord and tenant have not dealt at arm's length and the department judges the gross rent charged to be excessive, the department may adjust the gross rent to a reasonable amount.

History: En. Sec. 3, Ch. 584, L. 1981.

15-30-174. Residential property tax credit for elderly — filing date. (1) Except as provided in subsection (2), a claim for relief must be submitted at the same time the claimant's individual income tax return is due. For an individual not required to file a tax return, the claim must be submitted on or before April 15 of the year following the year for which relief is sought.

(2) The department may grant a reasonable extension for filing a claim whenever, in its judgment, good cause exists. The department shall keep a record of each extension and the reason for granting the extension.

(3) In the event that an individual who would have a claim under 15-30-171 through 15-30-179 dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

History: En. Sec. 4, Ch. 584, L. 1981.

15-30-175. Residential property tax credit for elderly — form of relief. Relief under 15-30-171 through 15-30-179 is a credit against the claimant's Montana individual income tax liability for the claim period. If the amount of the credit exceeds the claimant's liability under this chapter, the amount of the excess shall be refunded to the claimant. The credit may be claimed even though the claimant has no income taxable under this chapter.

History: En. Sec. 5, Ch. 584, L. 1981.

15-30-176. Residential property tax credit for elderly — computation of relief. The amount of the tax credit granted under the provisions of 15-30-171 through 15-30-179 is computed as follows:

(1) In the case of a claimant who owns the homestead for which a claim is made, the credit is the amount of property tax billed less the deduction specified in subsection (4).

(2) In the case of a claimant who rents the homestead for which a claim is made, the credit is the amount of rent-equivalent tax paid less the deduction specified in subsection (4).

(3) In the case of a claimant who both owns and rents the homestead for which a claim is made, the credit is:

(a) the amount of property tax billed on the owned portion of the homestead less the deduction specified in subsection (4); plus

(b) the amount of rent-equivalent tax paid on the rented portion of the homestead less the deduction specified in subsection (4).

(4) Property tax billed and rent-equivalent tax paid are reduced according to the following schedule:

Household income	Amount of reduction
$ 0-999	$0
1,000-1,999	$0
2,000-2,999	the product of .006 times the household income
3,000-3,999	the product of .016 times the household income
4,000-4,999	the product of .024 times the household income
5,000-5,999	the product of .028 times the household income
6,000-6,999	the product of .032 times the household income
7,000-7,999	the product of .035 times the household income
8,000-8,999	the product of .039 times the household income
9,000-9,999	the product of .042 times the household income
10,000-10,999	the product of .045 times the household income
11,000-11,999	the product of .048 times the household income
12,000 & over	the product of .050 times the household income

(5) For a claimant whose household income is $35,000 or more but less than $45,000, the amount of the credit is equal to the credit calculated under this section multiplied by the decimal equivalent of a percentage figure according to the following table:

Gross household income	Percentage of credit allowed
$35,000-37,500	40%
37,501-40,000	30%
40,001-42,500	20%
42,501-44,999	10%
45,000 or more	0%

(6) The credit granted may not exceed $1,000.

History: En. Sec. 6, Ch. 584, L. 1981; amd. Sec. 2, Ch. 134, L. 1983; amd. Sec. 11, Ch. 574, L. 1995; amd. Sec. 3, Ch. 543, L. 1997; amd. Sec. 3, Ch. 547, L. 1999.

15-30-177. Residential property tax credit for elderly — limitations. (1) Only one claimant per household in a claim period under the provisions of 15-30-171 through 15-30-179 is entitled to relief.

(2) Except as provided in subsection (3), a claim for relief may not be allowed for any portion of property taxes billed or rent-equivalent taxes paid that is derived from a public rent or tax subsidy program.

(3) Except for dwellings rented from a county or municipal housing authority, a claim for relief may not be allowed on rented lands or rented dwellings that are not subject to Montana property taxes during the claim period.

History: En. Sec. 7, Ch. 584, L. 1981; amd. Sec. 3, Ch. 134, L. 1983; amd. Sec. 2, Ch. 559, L. 1989; amd. Sec. 4, Ch. 543, L. 1997.

15-30-178. Residential property tax credit for elderly — proof of claim. A receipt showing property tax billed or a receipt showing gross rent paid, whichever is appropriate, must be filed with each claim. In addition, each claimant shall, at the request of the department, supply all additional information necessary to support a claim.

History: En. Sec. 8, Ch. 584, L. 1981; amd. Sec. 5, Ch. 543, L. 1997.

15-30-179. Residential property tax credit for elderly — denial of claim. A person filing a false or fraudulent claim under the provisions of 15-30-171 through 15-30-179 shall be charged with the offense of unsworn falsification to authorities pursuant to 45-7-203. If a false or fraudulent claim has been paid, the amount paid may be recovered as any other debt owed to the state. An additional 10% may be added to the amount due as a penalty. The unpaid debt shall bear interest from the date of the original payment of claim until paid, at the rate of 1% per month.

History: En. Sec. 9, Ch. 584, L. 1981.

15-30-180. *(Temporary)* **Credit for preservation of historic property.** (1) There is allowed as a credit against the taxes imposed by 15-30-103 a percentage of the credit allowed for qualified rehabilitation expenditures with respect to any certified historic building located in Montana as provided in 15-31-151.

(2) (a) As an alternative to the credit allowed in subsection (1), there is allowed as a credit against the taxes imposed by 15-30-103 an amount equal to 20% of the cost of creating the conservation easement and the diminution in the value of a historically significant property, including buildings and structures, that may result from a contract that places a conservation easement on the property if:

(i) the conservation easement holder is a qualified private organization as defined in 76-6-104;

(ii) the owner of the property is obligated by the contract creating the easement to maintain and preserve the property to retain its historical significance and characteristics for a period of not less than 29 years; and

(iii) the state historic preservation officer, provided for in 2-15-1512, verifies that a property is listed on the national register of historic places or that the property is historically valuable.

(b) For the purposes of this section, property is historically valuable if the property has, as certified by the state historic preservation office, significant qualities reflecting American history, architecture, engineering, or culture that was achieved prior to the last 50 years and the property possesses integrity of location, design, setting, materials, and workmanship and:

(i) is associated with events that have made a significant contribution to the broad patterns of Montana's or the nation's history;

(ii) is associated with the lives of persons significant in our past;

(iii) embodies the distinctive characteristics of a type, period, or method of construction, represents the work of a master, possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction; or

(iv) has yielded, or may be likely to yield, information important in history.

(c) In addition to any of the tax credit allowed in subsection (2)(a), the owner of a historically significant property, including buildings and structures, that is the subject of a conservation easement contract may take as a credit against the taxes imposed by 15-30-103 an amount equal to 20% of the amount spent by the owner for the direct cost of the protection and the preservation of the property if the preservation efforts are approved as reasonable and necessary by the conservation easement holder. The tax credit may not exceed $25,000 a year.

(3) The maximum tax credit that may be taken under subsection (2) for each historically significant property is $150,000.

(4) The credit allowed by subsection (2) may not be refunded if the taxpayer has a tax liability less than the amount of the credit. If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by subsection (2) for the tax year exceed the taxpayer's tax liability for the current tax year, the excess attributable to the current tax year's credit is a credit carryover to the 6 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first.

(5) A person may not take a credit against taxes due in any 1 year under both subsection (1) and (2).

(6) The credit allowed in subsection (1) may not be allocated between spouses unless the property is used by a small business corporation or a partnership in which they are shareholders or partners. *(Terminates December 31, 2011—sec. 3, Ch. 538, L. 2001.)*

15-30-180. *(Effective January 1, 2012)* **Credit for preservation of historic buildings.** (1) There is allowed as a credit against the taxes imposed by 15-30-103 a percentage of the credit allowed for qualified rehabilitation expenditures with respect to any certified historic building located in Montana as provided in 15-31-151.

(2) The credit may not be allocated between spouses unless the property is used by a small business corporation or a partnership in which they are shareholders or partners.

History: En. Sec. 2, Ch. 545, L. 1997; amd. Sec. 1, Ch. 538, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 538 inserted (2) through (5) allowing a tax credit for the preservation of historically significant property, including buildings and structures, allowing for tax credits resulting from the imposition of conservation easements on historically significant property, and allowing credit carryovers; in (6) near beginning after "credit" inserted "allowed in subsection (1)"; and made minor changes in style. Amendment effective January 1, 2002, and terminates December 31, 2011.

15-30-181. *(Temporary)* **Credit for contributions to affordable housing revolving loan account.** (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-103 or 15-31-101 in an amount equal to 20% of the amount donated by an individual taxpayer or 10% of the amount donated by a taxpayer under Title 15, chapter 31, during the year to the affordable housing revolving loan account established in 90-6-133. The maximum credit that may be claimed by a taxpayer is $10,000. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-30-121(1), 15-30-136(2), or 15-31-114.

(3) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has claimed a credit for a contribution to a qualified endowment under the provisions of 15-30-165 through 15-30-167, 15-31-161, or 15-31-162 for a contribution to the affordable housing revolving loan account.

(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. *(Terminates December 31, 2004—sec. 7, Ch. 411, L. 2001.)*

History: En. Sec. 1, Ch. 411, L. 2001.

Compiler's Comments

Effective Date: Section 5, Ch. 411, L. 2001, provided: "[This act] is effective on passage and approval." Approved April 28, 2001.

Retroactive Applicability: Section 6, Ch. 411, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

Termination: Section 7, Ch. 411, L. 2001, provided: "[This act] terminates December 31, 2004."

15-30-182 through 15-30-185 reserved.

15-30-186. Credit for dependent care assistance and referral services. (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the tax year by the employer for dependent care assistance. The credit must be computed in accordance with the provisions of 15-31-131.

(2) In addition to the credit allowed under subsection (1), there is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the tax year by the employer to provide information and referral services to assist employees of the employer employed within this state to obtain dependent care. The credit must be computed in accordance with the provisions of 15-31-131.

History: En. Sec. 2, Ch. 706, L. 1989; amd. Sec. 3, Ch. 540, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 540 inserted (2) allowing a tax credit to an employer for amounts paid or incurred during the tax year by the employer to provide information and referral services to assist certain employees to obtain dependent care; and made minor changes in style. Amendment effective May 1, 2001.

Retroactive Applicability: Section 7, Ch. 540, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000, and to day-care facilities acquired by an employer and placed in operation after December 31, 2000."

Cross-References

Credit for dependent care assistance — corporation license or income tax, 15-31-131.

15-30-187 reserved.

15-30-188. Credit for physician practicing in rural area — definitions. For the purposes of 15-30-188 through 15-30-191, the following definitions apply:

(1) "Commences practice" means the location or relocation of a physician's principal place of practice to a rural area and the start of a practice that is open to the general public, including recipients of medical assistance under Title 53. The term does not include the relocation of a physician's practice from one rural area to a different rural area.

(2) "Rural area" means a place without a hospital of at least 60 beds located within a radius of 30 miles.

History: En. Sec. 1, Ch. 771, L. 1991.

15-30-189. Tax credit for physician practicing in rural area. A licensed physician who commences practice in a rural area in Montana on a full-time basis is entitled to a credit against taxes imposed by 15-30-103 in an amount of $5,000 a year for each of 4 successive years, beginning with the year in which the practice commences. To qualify for the credit provided in this section, the physician shall maintain his practice for at least 9 months of the taxable year in which the credit is claimed.

History: En. Sec. 2, Ch. 771, L. 1991.

15-30-190. Credit for physician practicing in rural area — limitations — repayment. (1) Except as provided in subsection (2), the rural physician tax credit authorized in 15-30-189 is to be deducted from the taxpayer's income tax liability, beginning in the taxable year in which the physician commences practice in a rural area and for the next 3 successive years.

(2) (a) A rural physician tax credit may not be claimed as a carryback or carryforward and may not be refunded if there is no tax liability.

(b) A rural physician tax credit may not be used for any taxable year in which the physician ceases to practice or does not practice in the rural area.

(3) If a physician ceases to practice in the rural area within 4 years following the taxable year in which the credit is allowed, the physician shall repay to the state the amount of the credit claimed for that taxable year.

History: En. Sec. 3, Ch. 771, L. 1991.

15-30-191. Credit for physician practicing in rural area — rulemaking authority. The department of revenue may adopt rules as are necessary to implement and administer 15-30-188 through 15-30-191.

History: En. Sec. 4, Ch. 771, L. 1991.

15-30-192. Income tax relief — foreign capital depository assessment distribution. (1) The assessment payments made on June 15 of each year by foreign capital depositories pursuant to 15-31-803 must be redistributed to taxpayers as income tax relief as provided in this section.

(2) Each year, the department shall determine the June 15 collections under 15-31-803, including any late payments of assessments that should have been paid on any preceding June 15, together with penalty and interest on late payments. The amount of the collections divided by the number of individual state income taxpayers who filed income tax returns pursuant to 15-30-103 for the previous tax year equals the amount of income tax relief to which each taxpayer is entitled.

(3) The department shall include on each Montana state individual income tax form the amount of the income tax relief provided under this section. The form must provide that after the taxpayer's determination of taxes, the amount of the income tax relief is subtracted from the amount of taxes owed by the taxpayer. If the amount of taxes due is exceeded by the amount of income tax relief, the department shall pay the excess amount to the taxpayer, but only if the amount to be paid exceeds $10.

(4) (a) A return filed using the filing status married filing jointly is considered to have been filed by one taxpayer.

(b) A fiduciary or a beneficiary of an estate or trust who was required to file an income tax return pursuant to 15-30-135 is not considered a taxpayer unless a return was filed on behalf of the decedent the previous year.

History: En. Sec. 1, Ch. 501, L. 1999.

15-30-193 and 15-30-194 reserved.

15-30-195. Terminated. Sec. 7, Ch. 29, L. 1995.

History: En. Secs. 1, 2, 4, Ch. 29, L. 1995; amd. Sec. 7, Ch. 389, L. 1999.

15-30-196 through 15-30-198 reserved.

15-30-199. Terminated. Sec. 39, Ch. 15, Sp. L. July 1992.

History: En. Sec. 2, Ch. 15, Sp. L. July 1992.

Part 2
Withholding and Estimated Tax

15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" means all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work but does not include employment beyond the scope of normal household or domestic duties such as home health care or domiciliary care.

(3) "Employee" means:

(a) an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or Montana;

(b) an officer of a corporation;

(c) any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed and as to the manner of performance;

(d) all classes, grades, or types of employees including minors and aliens, superintendents, managers, and other supervisory personnel.

(4) "Employer" means:

(a) the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person;

(b) a person who pays $1,000 or more in wages within the current calendar year;

(c) a person who pays $1,000 or more in cash for domestic or household service in any quarter during the current calendar year;

(d) any individual or organization, including state government and any of its political subdivisions or instrumentalities, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or a limited liability partnership that has filed with the secretary of state, or domestic or foreign corporation or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person who has or had in its employ one or more individuals performing services for it within this state; or

(e) any person found to be an employer under Title 39, chapter 51, for unemployment insurance purposes is considered an employer for state income tax withholding purposes.

(5) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(6) "Lookback period" means the 12-month period ending the preceding June 30.

(7) (a) "Wages", unless specifically exempted under subsection (7)(b), means all remuneration for services performed by an employee for the employer, including the cash value of all remuneration paid in any medium other than cash, and includes but is not limited to the following:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) except those tips that are exempted in subsection (7)(b)(v), tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term "wages" does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) compensation in the form of meals and lodging, provided the compensation is not includable in gross income for state individual income tax purposes;

(iii) distributions from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002(40)(A), to a qualified individual employee;

(iv) payments made by an employee to any group plan or program to the extent that the payments are not taxable for state income tax purposes;

(v) tips or gratuities that are in accordance with 26 U.S.C. 3402(k) or service charges that are covered by 26 U.S.C. 3401 of the Internal Revenue Code, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging; or

(vi) payments that may not be taxed under federal law. *(Subsection (7)(b)(v) terminates on occurrence of contingency—sec. 3. Ch. 634, L. 1983.)*

History: **En. Sec. 1, Ch. 246, L. 1955; amd. Sec. 185, Ch. 516, L. 1973; R.C.M. 1947, 84-4942(part); amd. Sec. 20, Ch. 581, L. 1979; amd. Sec. 1, Ch. 128, L. 1983; amd. Sec. 2, Ch. 634, L. 1983; amd. Sec. 3, Ch. 706, L. 1989; amd. Sec. 1, Ch. 254, L. 1995; amd. Sec. 4, Ch. 479, L. 1995; amd. Sec. 1, Ch. 529, L. 1995; amd. Sec. 4, Ch. 572, L. 1995; amd. Sec. 70, Ch. 42, L. 1997; amd. Sec. 10, Ch. 491, L. 1997.**

Compiler's Comments

Contingent Termination: Section 3, Ch. 634, L. 1983, provided: "This act terminates if congress passes and the president approves legislation that removes the provision in section 6053(c)(3) of the Internal Revenue Code of 1954 that requires an employee allocation for tax purposes of 8% of gross receipts of the business for which the employee works. If this act terminates, it does so on the date of the final approval of the congressional legislation."

15-30-202. Withholding of tax from wages. (1) Each employer, except an independent contractor, making payment of wages for employment as defined in 15-30-256 shall withhold from wages a tax determined in accordance with the withholding tax tables prepared and issued by the department.

(2) An employer who maintains two or more separate establishments within this state is considered to be a single employer for the purposes of this part.

History: **En. Sec. 2, Ch. 246, L. 1955; amd. Sec. 3, Ch. 227, L. 1957; amd. Sec. 186, Ch. 516, L. 1973; R.C.M. 1947, 84-4943; amd. Sec. 2, Ch. 128, L. 1983; amd. Sec. 2, Ch. 254, L. 1995; amd. Sec. 71, Ch. 42, L. 1997; amd. Sec. 11, Ch. 491, L. 1997.**

Cross-References

Return required and withholding credited against taxes due on return, 15-30-142.

Employer to provide employee with statement of deductions, 39-3-101.

15-30-203. Employer liable for employment taxes. (1) Each employer is liable for the reports and payments required by 15-30-204, the amounts required to be deducted and withheld under this part, and the amounts plus interest due on the amounts are a tax. With respect to the tax, the employer is the taxpayer.

(2) The officer of a corporation whose responsibility it is to collect, truthfully account for, and pay to the state the amounts withheld from the corporation's employees and who fails to pay the withholdings is liable to the state for the amounts withheld and the penalty and interest due on the amounts.

(3) (a) Each officer of the corporation is individually liable along with the corporation for filing reports to the extent that the officer has access to the requisite records and for unpaid taxes, penalties, and interest upon a determination that the officer:

(i) possessed the responsibility to file reports and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation for directing the filing of tax reports or the payment of other corporate obligations and exercised that responsibility resulting in the corporation's failure to file reports required by this part or pay taxes due as required by this part.

(b) In determining which corporate officer is liable, the department is not limited to considering the elements set forth in subsection (3)(a) to establish individual liability and may consider any other available information.

(4) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual remains liable for any reports and the amount of taxes, penalties, and interest unpaid by the corporation.

(5) For the purpose of determining liability for the filing of reports and the remittance of taxes, penalties, and interest owed under this part, a member-managed limited liability company must be treated as a partnership with liability for filing reports and remitting taxes, penalties, and interest owed extending to each member who was a member at the time the report or taxes were due.

(6) For determining personal liability for the failure to file reports and remit taxes, penalties, and interest owed by a manager-managed limited liability company, the managers of

the limited liability company are jointly and severally liable along with the limited liability company for reports and any taxes, penalties, and interest owed.

(7) For determining personal liability for the failure to file reports and remit taxes, penalties, and interest owed by a limited liability partnership, the partners of the limited liability partnership are jointly and severally liable, along with the limited liability partnership, for reports and any taxes, penalties, and interest due.

(8) If the employer fails to deduct and withhold the amounts specified in 15-30-202 and the tax against which the deducted and withheld amounts would have been credited is paid, the amounts required to be deducted and withheld may not be collected from the employer.

History: En. Sec. 4, Ch. 246, L. 1955; R.C.M. 1947, 84-4945; amd. Sec. 1, Ch. 681, L. 1979; amd. Sec. 1, Ch. 33, L. 1991; amd. Sec. 12, Ch. 491, L. 1997.

15-30-204. Reporting and remittance requirements. (1) For the purposes of this section, employers shall remit their taxes in accordance with the appropriate remittance schedule as follows:

(a) Employers whose total liability for state income tax withholding during the preceding lookback period was $12,000 or more shall remit on an "accelerated schedule", which is the same as the employer's federal due dates for federal tax deposits.

(b) Employers whose total liability for state income tax withholding during the preceding lookback period was less than $12,000 but more than $1,199 shall remit on a "monthly schedule" for which the remittance due date is on or before the 15th day of the month following the payment of wages.

(c) Employers whose total liability for state income tax withholding during the preceding lookback period was less than $1,200 shall remit on a "quarterly schedule" for which the remittance due date is on or before the last day of the month following the close of each calendar quarter.

(d) Employers who are not subject under Title 39, chapter 51, for unemployment insurance and whose total liability for state income tax withholding during the preceding lookback period was less than $1,200 may remit on an "annual schedule" for which the remittance is due on or before February 28 of the year following payment of wages.

(2) (a) Every employer is required to file a report quarterly in the form required by the department.

(b) The report is due on or before the last day of the month following the close of the calendar quarter.

(c) An employer who is not subject under Title 39, chapter 51, to unemployment insurance may elect to file an annual report on or before February 28 for the preceding calendar year.

(d) An employer who has no payroll during a quarter may elect to report "no wages paid this quarter" using alternative reporting methods provided in department rules.

(e) An employer, in addition to the scheduled reports and remittances, must file the annual report and wage statements as required by 15-30-207.

(3) (a) Except as provided in subsection (3)(g), payments are due as required according to the remittance schedule for each employer.

(b) If an employer subject to the provisions of subsection (1)(d) does not comply with the requirements of this section, the employer may be subject to the quarterly reporting schedule provided in subsection (2)(a) and to the quarterly remittance schedule provided in subsection (1)(c) until the department determines from the employer's subsequent filing and payment history that the employer will file and remit in a timely fashion.

(c) On or before November 1 of each year, the department shall notify the employers subject to the provisions of this section of the employers' remittance schedules for the following calendar year based upon the department's review of the preceding lookback period.

(d) Except as provided in subsection (3)(g), a new employer or an employer with no filing history is subject to the quarterly remittance schedule in subsection (1)(c) until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.

(e) An employer who is subject to the quarterly schedule in subsection (1)(c) may elect to remit payments on a more frequent basis. An employer who is on an annual schedule may elect to remit monthly or quarterly payments.

(f) An employer who exceeds either threshold, as defined in 15-30-201(4)(b) and (4)(c), must begin withholding state income tax on or before the last day of the month following the quarter in which the wages paid exceeded the threshold requirements. The employer is subject to the quarterly remittance schedule until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.

(g) An employer who is not subject to unemployment insurance under Title 39, chapter 51, and whose estimated annual state income tax withholding is not expected to exceed $1,199 for the calendar year may remit according to the annual schedule and report annually on or before February 28.

(h) An employer may use alternative remittance methods in conjunction with the department's electronic remittance program in accordance with department rules.

(4) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under 15-1-703.

(5) Each employer shall keep true and accurate payroll records containing the information that the department may prescribe by rule. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. An employer who maintains its records outside Montana shall furnish copies of those records to the department at the employer's expense.

History: En. Sec. 5, Ch. 246, L. 1955; amd. Sec. 1, Ch. 212, L. 1967; amd. Sec. 187, Ch. 516, L. 1973; R.C.M. 1947, 84-4946; amd. Sec. 1, Ch. 28, Sp. L. June 1986; amd. Sec. 2, Ch. 289, L. 1989; amd. Sec. 5, Ch. 572, L. 1995; amd. Sec. 13, Ch. 491, L. 1997; amd. Sec. 1, Ch. 184, L. 1999.

15-30-205. Amount withheld considered as tax collected. All amounts deducted and withheld shall be considered as a tax collected under the provisions of 15-30-201 through 15-30-209, and no employee shall have any right of action against his employer in respect to any moneys so deducted and withheld from his wages and paid to the state in compliance or intended compliance with 15-30-201 through 15-30-209.

History: En. Sec. 6, Ch. 246, L. 1955; R.C.M. 1947, 84-4947; R.C.M. 1947, 84-4947.

15-30-206. Annual withholding statement. Every employer shall, prior to January 31 in each year, furnish to each employee a written statement showing the total wages paid by the employer to the employee during the preceding calendar year and showing the amount of the federal income tax deducted and withheld from such wages and the amount of the tax deducted and withheld therefrom under the provisions of 15-30-201 through 15-30-209. Said statement shall contain such additional information and shall be in such form as the department shall prescribe, and a duplicate thereof shall be filed by the employee with his state income tax return.

History: En. Sec. 7, Ch. 246, L. 1955; amd. Sec. 188, Ch. 516, L. 1973; R.C.M. 1947, 84-4948; amd. Sec. 3, Ch. 289, L. 1989.

15-30-207. Annual statement by employer. (1) Every employer shall, on or before February 28 in each year, file with the department a wage and tax statement for each employee in the form and summarizing information as the department requires, including the total wages paid to the employee during the preceding calendar year or any part of the calendar year and showing the total amount of the federal income tax deducted and withheld from the wages and the total amount of the tax deducted and withheld from the wages under the provisions of 15-30-201 through 15-30-209.

(2) The annual statement filed by an employer with respect to the wage payments reported constitutes full compliance with the requirements of 15-30-301 relating to the duties of information agents, and additional information return is not required with respect to the wage payments.

History: En. Sec. 9, Ch. 246, L. 1955; amd. Sec. 189, Ch. 516, L. 1973; R.C.M. 1947, 84-4950; amd. Sec. 1, Ch. 36, L. 1983; amd. Sec. 4, Ch. 289, L. 1989; amd. Sec. 7, Ch. 637, L. 1993; amd. Sec. 14, Ch. 491, L. 1997; amd. Sec. 2, Ch. 184, L. 1999.

15-30-208. Withheld taxes held in trust for state. Every employer who deducts and withholds any amounts under the provisions of 15-30-201 through 15-30-209 shall hold the amounts in trust for the state of Montana.

History: **En. Sec. 10, Ch. 246, L. 1955; amd. Sec. 190, Ch. 516, L. 1973; R.C.M. 1947, 84-4951; amd. Sec. 10, Ch. 439, L. 1981; amd. Sec. 1, Ch. 34, L. 1985; amd. Sec. 1, Ch. 489, L. 1987; amd. Sec. 15, Ch. 491, L. 1997.**

15-30-209. Violations by employer — penalties, interest, and remedies. (1) The department shall, as provided in 15-1-216, add penalty and interest to the amount of all delinquent withholding taxes.

(2) The first time in any consecutive 3-year period that an employer files a report or remits a tax after the due date, the department shall issue a warning notice explaining to the employer that the employer failed to file a report on the due date as required by law and, if applicable, that the employer failed to remit the tax on the due date as required by law and the department shall notify the employer of the consequences of any further subsequent late reporting or late remittance.

(3) A late report penalty may not be assessed under 15-1-216 if an employer files the late report prior to the issuance of a notice of delinquent report.

(4) A late payment penalty may be waived pursuant to 15-1-206 if an acceptable payment agreement is made between the department and the employer. An employer's failure to meet the terms of the payment agreement voids the waiver and the penalty must be recomputed from the due date on the unpaid tax.

(5) (a) A subpoena penalty of $50 must be assessed whenever, as the result of a refusal of an employer to furnish wage information or pay taxes on time, the department issues a subpoena pursuant to 15-1-302, to obtain wage information or make a summary or jeopardy assessment pursuant to 15-1-703.

(b) If an employer fails to honor the subpoena provided in subsection (5)(a), an additional $100 penalty must be added to the liability.

(6) In addition to any other penalty provided by law, the failure of an employer to furnish a wage and tax statement as required by 15-30-207(1) subjects the employer to a penalty of $5 for each failure with a minimum of $50.

(7) Penalties may be waived by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts including a tax lien.

(8) If any tax imposed by this chapter or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.

(9) The tax lien provided for in subsection (8) is not valid against any third party owning an interest in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if the third party receives from the most recent grantor of the interest an affidavit stating that all taxes, assessments, penalties, and interest due from the grantor have been paid.

(10) A grantor who signs and delivers to the third party an affidavit as provided in subsection (9) is subject to the penalties imposed by 15-30-321(1) if any part of the affidavit is untrue. The department may bring an action as provided in 15-30-321(1) in the name of the state to recover the civil penalty and any delinquent taxes.

(11) All of the remedies available to the state for the administration, enforcement, and collection of income taxes are available and apply to the tax required to be deducted and withheld under the provisions of 15-30-201 through 15-30-208 unless otherwise specifically addressed in this part.

History: **(1)En. Sec. 13, Ch. 246, L. 1955; Sec. 84-4954, R.C.M. 1947; (2)En. Sec. 14, Ch. 246, L. 1955; amd. Sec. 191, Ch. 516, L. 1973; Sec. 84-4955, R.C.M. 1947; R.C.M. 1947, 84-4954, 84-4955(part); amd. Sec. 16, Ch. 491, L. 1997; amd. Sec. 8, Ch. 427, L. 1999; amd. Sec. 3, Ch. 108, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 108 inserted (1) requiring penalty and interest to be added to delinquent withholding taxes; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

Administration and collection of income taxes, Title 15, ch. 30, part 3.

15-30-210. Electronic funds transfer and electronic reporting — employer option. (1) An employer, within 30 days of notification of the employer's remittance schedule as required by 15-30-204, may elect to remit and file state income tax withholding electronically. An election form must be provided with the notification of the employer's remittance schedule and, when returned to the department, is valid for the next 12 months. An employer may cancel the election provided in this section by providing written notice of the cancellation to the department.

(2) An employer who elects pursuant to subsection (1) to remit tax payments through electronic funds transfer shall electronically submit the returns required by 15-30-204 to the department in a format established and approved by the department.

History: En. Sec. 1, Ch. 572, L. 1995; amd. Sec. 3, Ch. 184, L. 1999.

15-30-211. Renumbered 15-1-208 and 16-11-110. Sec. 2, Ch. 6, L. 1997.

15-30-212 through 15-30-214 reserved.

15-30-215. Voluntary state withholding from federal annuity — agreement with federal government. (1) The director of revenue shall enter into an agreement with the federal office of personnel management to allow voluntary state tax withholding from federal annuity payments as provided in 5 U.S.C. 8345.

(2) The department of revenue may adopt administrative rules necessary to implement the federal agreement entered into under subsection (1) and to comply with federal laws and regulations for voluntary withholding from federal annuity payments.

History: En. Sec. 1, Ch. 243, L. 1993.

15-30-216 through 15-30-220 reserved.

15-30-221 through 15-30-227. Repealed. Sec. 3, Ch. 570, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

15-30-221. (1) thru (3)En. Sec. 2, Ch. 208, L. 1959; amd. Sec. 1, Ch. 154, L. 1961; amd. Sec. 159, Ch. 516, L. 1973; Sec. 84-4903.2, R.C.M. 1947; (4)En. Sec. 3, Ch. 208, L. 1959; Sec. 84-4903.3, R.C.M. 1947; R.C.M. 1947, 84-4903.2, 84-4903.3; amd. Sec. 21, Ch. 581, L. 1979.

15-30-222. (1)En. Sec. 4, Ch. 208, L. 1959; Sec. 84-4903.4, R.C.M. 1947; (2), (3)En. Sec. 5, Ch. 208, L. 1959; amd. Sec. 2, Ch. 154, L. 1961; amd. Sec. 3, Ch. 10, Ex. L. 1969; amd. Sec. 160, Ch. 516, L. 1973; Sec. 84-4903.5, R.C.M. 1947; R.C.M. 1947, 84-4903.4, 84-4903.5.

15-30-223. En. Sec. 6, Ch. 208, L. 1959; amd. Sec. 161, Ch. 516, L. 1973; R.C.M. 1947, 84-4903.6.

15-30-224. En. Sec. 7, Ch. 208, L. 1959; amd. Sec. 3, Ch. 154, L. 1961; amd. Sec. 162, Ch. 516, L. 1973; R.C.M. 1947, 84-4903.7.

15-30-225. En. Sec. 8, Ch. 208, L. 1959; amd. Sec. 163, Ch. 516, L. 1973; amd. Sec. 4, Ch. 34, L. 1977; R.C.M. 1947, 84-4903.8.

15-30-226. En. Sec. 9, Ch. 208, L. 1959; amd. Sec. 164, Ch. 516, L. 1973; R.C.M. 1947, 84-4903.9; amd. Sec. 11, Ch. 439, L. 1981.

15-30-227. En. Sec. 10, Ch. 208, L. 1959; amd. Sec. 165, Ch. 516, L. 1973; R.C.M. 1947, 84-4903.10.

15-30-228. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

History: En. Sec. 11, Ch. 208, L. 1959; amd. Sec. 100, Ch. 405, L. 1973; R.C.M. 1947, 84-4903.11.

15-30-229 through 15-30-240 reserved.

15-30-241. Estimated tax — payment — exceptions — interest. (1) (a) Each individual subject to tax under this chapter, except farmers or ranchers as defined in subsection (6), shall pay for the tax year, through employer withholding, as provided in 15-30-202, through payment of estimated tax in four installments, as provided in subsection (2) of this section, or through a combination of employer withholding and estimated tax payments, at least:

(i) 90% of the tax for the current tax year, less tax credits and withholding allowed the taxpayer; or

(ii) an amount equal to 100% of the individual's tax liability for the preceding tax year, if the preceding tax year was a period of 12 months and if the individual filed a return for the tax year.

(b) Payment of estimated taxes under this section is not required if:

(i) the combined tax liability of employer withholding and estimated tax for the current year is less than $500 after reductions for credits and withholding;

(ii) the individual did not have any tax liability for the preceding tax year, which was a tax year of 12 months, and if the individual was a citizen or resident of the United States throughout that tax year;

(iii) the underpayment was caused by reason of casualty, disaster, or other unusual circumstances that the department determines to constitute good cause; or

(iv) the individual retired in the tax year after having attained the age of 62 or if the individual became disabled in the tax year. In addition, payment of estimated taxes under this section is not required in the tax year following the tax year in which the individual retired or became disabled.

(2) Estimated taxes must be paid in four installments according to one of the following schedules:

(a) For each taxpayer whose tax year begins on January 1, estimated tax payments are due on the following dates:

Installment	Date
First	April 15
Second	June 15
Third	September 15
Fourth	January 15 of the following tax year

(b) For each taxpayer whose tax year begins on a date other than January 1, estimated tax payments are due on the following dates:

Installment	Date
First	15th day of the 4th month following the beginning of the tax year
Second	15th day of the 6th month following the beginning of the tax year
Third	15th day of the 9th month following the beginning of the tax year
Fourth	15th day of the month following the close of the tax year

(3) (a) Except as provided in subsection (4), each installment must be 25% of the required annual payment determined pursuant to subsection (1). If the taxpayer's tax situation changes, each succeeding installment must be proportionally changed so that the balance of the required annual payment is paid in equal installments over the remaining period of time.

(b) If the taxpayer's tax situation changes after the date for the first installment or any subsequent installment, as specified in subsection (2)(a) or (2)(b), so that the taxpayer is required to pay estimated taxes, the taxpayer shall pay 25% for each succeeding installment except for the first one in which a payment is required. For estimated taxes required to be paid beginning with the second installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 50% for that installment and 25% for the third and fourth installments, respectively. For estimated taxes required to be paid beginning with the third installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 75% for that installment and 25% for the fourth installment.

(4) (a) If for any required installment the taxpayer determines that the installment payment is less than the amount determined under subsection (3)(a), the lower amount may be paid as an annualized income installment.

(b) For any required installment, the annualized income installment is the applicable percentage described in subsection (4)(c) applied to the tax computed on the basis of annualized taxable income in the tax year for the months ending before the due date for the installment less the total amount of any prior required installments for the tax year.

(c) For the purposes of this subsection (4), the applicable percentage is determined according to the following schedule:

Required Installment	Applicable Percentage
First	22.5%
Second	45%
Third	67.5%
Fourth	90%

(d) A reduction in a required installment resulting from the application of an annualized income installment must be recaptured by increasing the amount of the next required installment, determined under subsection (3)(a), by the amount of the reduction. Any subsequent installment must be increased by the amount of the reduction until the amount has been recaptured.

(5) (a) If an estimated tax, an employer withholding tax, or a combination of estimated tax and employer withholding tax is underpaid, there must be added to the amount due under this chapter interest equal to 12% a year on the amount of the underpayment. The interest is computed on the amount of the underpayment, as determined in subsection (5)(b), for the period from the time the payment was due to the date payment was made or to the 15th day of the 4th month of the year following the tax year in which the payment was to be made, whichever is earlier.

(b) For the purpose of determining the amount of interest due in subsection (5)(a), the amount of the underpayment is the required installment amount less the installment amount paid, if any, on or before the due date for the installment.

(c) For the purpose of determining the amount of interest due in subsection (5)(a), an estimated payment must be credited against unpaid required installments in the order in which those installments are required to be paid.

(d) For each married taxpayer filing separately on the same form, the interest provided for in subsection (5)(a) must be computed on the combined tax liability after reductions for credits and withholding, as shown on the taxpayer's return.

(e) Interest may not be charged with respect to any underpayment of the fourth installment of estimated taxes if:

(i) the taxpayer pays in full the amount computed on the return as payable; and

(ii) the taxpayer files a return on or before the last day of the month following the close of the tax year referred to in subsection (2)(a) or (2)(b).

(6) For the purposes of this section, "farmer or rancher" means a taxpayer who derives at least 66 ⅔% of the taxpayer's gross income, as defined in 15-30-101, from farming or ranching operations, or both.

(7) The department shall promulgate rules governing reasonable extensions of time for paying the estimated tax. An extension may not be for more than 6 months.

History: En. 84-4939 by Sec. 12, Ch. 260, L. 1955; amd. Sec. 183, Ch. 516, L. 1973; amd. Sec. 1, Ch. 374, L. 1977; R.C.M. 1947, 84-4939(part); amd. Sec. 1, Ch. 17, Sp. L. January 1992; amd. Sec. 9, Ch. 427, L. 1999; amd. Sec. 10, Ch. 143, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 143 in (6) after "gross income, as defined in" substituted "15-30-101" for "15-30-101(7)". Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

Return required and estimated tax credited against taxes due, 15-30-142.

15-30-242. Repealed. Secs. 2, 4, Ch. 17, Sp. L. January 1992.

History: En. 84-4940 by Sec. 13, Ch. 260, L. 1955; amd. Sec. 184, Ch. 516, L. 1973; amd. Sec. 2, Ch. 374, L. 1977; R.C.M. 1947, 84-4940(part).

15-30-243 through 15-30-245 reserved.

15-30-246. Policy and purpose. (1) It is the policy and intent of the legislature that lottery proceeds received by a person who redeems a ticket or chance to win a prize on a ticket or chance purchased in Montana under the provisions of Title 23, chapter 7, is Montana source income, notwithstanding the residence of the person or entity that redeems the ticket. This policy statement affirms that the legislature has always considered lottery proceeds to be Montana source income.

(2) The purpose of 15-30-247 is to ensure that lottery proceeds that are Montana source income are subject to the withholding tax under the individual income tax laws of the state.

History: En. Sec. 1, Ch. 488, L. 1993.

15-30-247. Withholding of lottery winnings. (1) When making any payment of winnings that are subject to withholding, the state lottery commission, created under Title 23, chapter 7, part 2, shall deduct and withhold from the payment a tax in an amount equal to 10% of the payment.

(2) For the purposes of this section, the phrase "winnings that are subject to withholding" means the proceeds in excess of $5,000 won from a lottery game operated pursuant to Title 23, chapter 7.

(3) Every person who receives a payment of winnings that are subject to withholding shall furnish the state lottery commission with a signed statement containing the name, address, and taxpayer identification number of the recipient and of every person entitled to any portion of the payment. The signed statement must be treated as a statement under oath or equivalent affirmation for the purposes of 45-7-202, relating to the criminal offense of false swearing.

History: En. Sec. 2, Ch. 488, L. 1993.

15-30-248. Determination of employer status. A final determination by either the department of labor and industry or the workers' compensation court that an employer-employee relationship existed between the taxpayer and certain individuals subjecting the taxpayer to the requirements of chapter 30, part 2, is not subject to any further administrative or judicial challenge in any proceeding before or with the department of revenue concerning a determination of the proper amount of state income tax withholding. A final decision of the workers' compensation court may be appealed as provided in 39-71-2904.

History: En. Sec. 4, Ch. 529, L. 1995; amd. Sec. 4, Ch. 184, L. 1999; amd. Sec. 1, Ch. 442, L. 1999.

15-30-249. Confidentiality. Reports and returns required to be filed under this part are confidential, subject to the limitations contained in 39-51-603(3) and (4).

History: En. Sec. 1, Ch. 491, L. 1997.

15-30-250. Application and distribution of payments. (1) Except as provided by rule, tax payments including delinquent tax, penalty, and interest must be applied to the taxpayer's account, prorated on the basis of the amount of each tax due to the amount of the total tax due, and distributed to the appropriate fund accounts as required by law.

(2) Payment of a penalty assessed for late filing of a report for which there is no tax due for the period must be applied to the employer's liability for the penalties and equally distributed to the fund accounts specified by law among the tax types the report covers.

History: En. Sec. 2, Ch. 491, L. 1997.

15-30-251. Statute of limitations. (1) In the case of a nonfiled return, the department may, at any time, audit the employer or estimate the tax due from any information in its possession and issue an assessment for the amount of the tax, penalty, and interest the department determines to be due.

(2) If the department determines, pursuant to a review conducted pursuant to 15-30-145, that any return is incorrect, it may revise the return within 5 years of the due date of the original return, within 5 years of the date the return was filed, or 1 year from the date an amended return was filed, whichever is later.

(3) Notwithstanding the provisions of subsection (2), if an employer purposely or knowingly files a false or fraudulent return, with intent to evade the tax, the amount of tax, penalty, and interest due may be determined at any time after the return is filed and collected at any time after it becomes due.

(4) For the purposes of this section, a return filed before the due date is considered to be filed on the due date.

(5) The statute of limitations is suspended during any time in which an employer-employee relationship determination has been appealed as provided in 15-1-211, and the time for assessment extends for an additional 1 year from the date the decision becomes final.

History: En. Sec. 3, Ch. 491, L. 1997.

15-30-252 through 15-30-254 reserved.

15-30-255. Credits and refunds — period of limitations. (1) If the department determines by examination of an employer's account, or upon claim filed by an employer, that the employer has overpaid the amount of tax, penalty, or interest, the amount of the overpayment may be refunded to the employer or applied to current or future obligations of any tax, penalty, or interest for any tax contained in this title at the discretion of the taxpayer.

(2) A credit or refund may be allowed only if the claim is filed or the determination is made within 5 years of the due date prescribed for filing a report or 1 year from the date of the notification of the overpayment by the department.

(3) The department shall notify the employer of the overpayment and the credit or refund options available to the employer. A credit must be applied to the employer account unless directed otherwise by the employer.

(4) If a claim is disallowed, the department shall notify the employer. The decision disallowing the claim is subject to review as provided in 15-1-211.

(5) Interest is:

(a) allowed on an overpayment at the same rate as charged for late tax payments under this part;

(b) payable from the due date of the payment or the date overpayment was verified, whichever is later;

(c) not payable if the overpayment is applied to current or future obligations with the department.

(6) Interest is not allowed if the overpayment is refunded within 45 days from the date the employer directs the department to refund the overpayment.

(7) If additional information is required to verify the amount of the overpayment, the 45-day period in subsection (6) does not begin until the information is provided.

History: En. Sec. 4, Ch. 491, L. 1997.

15-30-256. Employment defined and exclusions from definition of employment. (1) As used in this part "employment", subject to the provisions of subsection (2), means the service by an employee for an employer.

(2) The term "employment" does not include:

(a) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 15-30-201(4)(c);

(b) service performed by a dependent, as defined in 26 U.S.C. 152, of a sole proprietor for whom an exemption may be claimed by the employer under the Internal Revenue Code or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor pursuant to 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has previously acknowledged or acknowledges in writing that the person performing the service and the service are not covered for unemployment insurance purposes. As used in this subsection:

(i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) service performed as a licensed real estate broker or salesperson under Title 37, chapter 51;

(e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and:

(i) who has acknowledged in writing that the cosmetologist or barber working under contract is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined in 37-30-101, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the cosmetology salon or barbershop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership or a limited liability partnership, or members of a member-managed limited liability company that has filed articles of organization with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed by a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all service as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for those individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the state by an individual receiving work relief or work training;

(n) service performed by an inmate of a state prison or other state correctional or custodial institution;

(o) service by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed for aid or sustenance only;

(q) active service as members of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33);

(r) agricultural labor; or

(s) service performed by an independent contractor.

History: En. Sec. 5, Ch. 491, L. 1997.

Cross-References

Montana Limited Liability Company Act, Title 35, ch. 8.
Partnerships generally, Title 35, ch. 10.
Registration of limited liability partnerships, Title 35, ch. 10, part 7.
Employment and training program, 53-2-903.
Community-based services, Title 53, ch. 20, part 2.
Prison industries training program, 53-30-131.

15-30-257. Special review procedure for certain tax issues that involve unemployment insurance benefit claim — notice — appeal. (1) As used in this section, the following definitions apply:

(a) "Administrator" means the administrator of the income and miscellaneous tax division, department of revenue.

(b) "Board" means the state tax appeal board established by 15-2-101.

(c) "Claimant" means an individual who has filed a claim for unemployment insurance benefits under Title 39, chapter 51, and has asserted that the individual's employer inaccurately or incompletely reported the individual's wages.

(d) "Employer" means an employer as defined in 39-51-202, that has a potential tax liability arising from the inaccurate or incomplete reporting of a claimant's wages.

(e) "Interested party" means the claimant, the employer, or the department of labor and industry.

(2) (a) The department shall promptly investigate whether wages earned by the claimant were properly reported by the employer. Upon completion of the investigation, the department shall issue a written determination stating whether the wages were properly reported and, if not, the correct amount of reportable wages earned by the claimant. A copy of the determination must be mailed to each interested party at the last-known address of each party.

(b) The determination is final unless an interested party, within 10 calendar days of the mailing of the determination, makes a written application for reconsideration of the determination or makes a written appeal of the determination. A late-filed application for reconsideration may be accepted by the department upon a showing of good cause in writing.

(c) The written application or appeal must specify the reasons for the application or appeal and provide any other information relevant to the application or appeal.

(d) An interested party may appeal the reconsideration of a determination by making a written appeal within 10 calendar days of the mailing of the notice of the redetermination. A late-filed application for reconsideration may be accepted by the department upon a showing of good cause in writing.

(3) (a) Upon appeal of a determination or redetermination, the administrator or a person appointed by the administrator shall hold an informal hearing that may be conducted by telephone or video conference. After the hearing, the administrator or a designee shall promptly make findings of fact and conclusions of law and affirm, modify, reverse, or remand the determination or redetermination. A copy of the decision, with supporting findings of fact and conclusions of law, must be mailed to each interested party at the last-known address of each party.

(b) (i) The decision is binding on the interested parties unless a written appeal is made to the board. The appeal must be filed with the board within 10 calendar days after notice of the decision was mailed. A late-filed application for reconsideration may be accepted by the board upon a showing of good cause in writing.

(ii) If the decision becomes final, the department shall proceed as provided in subsection (5).

(4) (a) An appeal to the board, pursuant to 15-2-302, is initiated by filing a complaint with the board. The board shall promptly mail a copy of the complaint to each interested party at the last-known address of each party.

(b) Any interested party who wants to file an answer must do so within 10 calendar days after the board mails a copy of the complaint. An answer up to 10 days late may be accepted by the board upon a showing of good cause in writing.

(c) The decision of the board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review under this section are subject to the provisions of the Montana Administrative Procedure Act.

(5) When the department's decision becomes final, whether as the result of appeal, judicial review, or the lapse of time during which to take an appeal, the interested parties are bound by the decision and may not contest any issue that was decided as part of the decision either administratively or judicially. An employer who is determined to have inaccurately or incompletely reported wages may not contest the issue of whether wages should have been reported, or the amount of the wages that should have been reported, once the department assesses taxes on those wages.

History: En. Sec. 7, Ch. 491, L. 1997.

Part 3
Administration and Collection

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-30-301. *(Temporary)* **Information agents' duties.** (1) Every information agent shall make a return to the department of complete information concerning the following distributions made for any individual during the tax year upon which no withholding tax has been deducted:

(a) sums in excess of $10 distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code of 1965 or as that section may be amended, royalties, and payments made under a retirement plan covering an owner-employee as defined in section 401(c)(3) of the Internal Revenue Code of 1965 or as that section may be amended;

(b) all interest income in excess of $10 from obligations of another state and a county, municipality, district, or other political subdivision of that state;

(c) interest, other than that specified in subsections (1)(a) and (1)(b), rents, salaries, wages, prizes, awards, annuities, pensions, and other fixed or determinable gains, profits, and income in excess of $600, except interest coupons payable to the bearer;

(d) proceeds from real estate transactions that under rules or regulations of the internal revenue service are required to be reported.

(2) The return should be made under the regulations and in the form and manner prescribed by the department. For ease of reporting, the form should be identical to the comparable federal form or the department may allow submission of a copy of the federal form or submission by magnetic media or in electronic format.

(3) Notwithstanding the provisions of 15-30-321, an information agent who fails to file a return under the provisions of subsection (1)(d) is subject only to a penalty of $50 a return. *(Terminates December 31, 2004—sec. 4, Ch. 461, L. 2001.)*

15-30-301. *(Effective January 1, 2005)* **Information agents' duties.** (1) Every information agent shall make a return to the department of complete information concerning the following distributions made for any individual during the taxable year upon which no withholding tax has been deducted:

(a) sums in excess of $10 distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code of 1965 or as that section may be amended, royalties, and payments made under a retirement plan covering an owner-employee as defined in section 401(c)(3) of the Internal Revenue Code of 1965 or as that section may be amended;

(b) all interest income in excess of $10 from obligations of another state and a county, municipality, district, or other political subdivision of that state;

(c) interest, other than that specified in subsections (1)(a) and (1)(b), rents, salaries, wages, prizes, awards, annuities, pensions, and other fixed or determinable gains, profits, and income in excess of $600, except interest coupons payable to the bearer.

(2) The return should be made under the regulations and in the form and manner prescribed by the department; provided, however, that for ease of reporting, the form shall be as nearly identical to the comparable federal form as possible.

History: En. Sec. 13, Ch. 181, L. 1933; re-en. Sec. 2295.13, R.C.M. 1935; amd. Sec. 7, Ch. 260, L. 1955; amd. Sec. 1, Ch. 205, L. 1967; amd. Sec. 170, Ch. 516, L. 1973; R.C.M. 1947, 84-4913; amd. Sec. 5, Ch. 289, L. 1989; amd. Sec. 1, Ch. 89, L. 1991; amd. Sec. 1, Ch. 461, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 461 inserted (1)(d) requiring reporting of proceeds from real estate transactions; in (2) in second sentence after first "form" substituted "should be identical to the comparable federal form or the department may allow submission of a copy of the federal form or submission by magnetic media or in electronic format" for "shall be as nearly identical to the comparable federal form as possible"; inserted (3) providing a penalty for an information agent who fails to file a return; and made minor changes in style. Amendment effective July 1, 2001, and terminates December 31, 2004.

Cross-References

Annual statement by employer sufficient for compliance, 15-30-207.

15-30-302. Oaths administered by director of revenue and designated employees. The director and each employee designated by him may administer an oath to any person or take the acknowledgment of any person in respect to any report or return required by or pursuant to this chapter or by the rules of the department.

History: En. Sec. 21, Ch. 181, L. 1933; re-en. Sec. 2295.21, R.C.M. 1935; amd. Sec. 101(a), Ch. 405, L. 1973; R.C.M. 1947, 84-4921.

15-30-303. Confidentiality of tax records. (1) Except as provided in subsections (7) and (8) or in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return or report filed in connection with the taxpayer's tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311.

(4) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding $1,000 or by imprisonment in the county jail for a term not exceeding 1 year, or both. If the

offender is an officer or employee of the state, the offender must be dismissed from office and may not hold any public office in this state for a period of 1 year after dismissal.

(6) This section may not be construed to prohibit the department from providing taxpayer return information and information from employers' payroll withholding reports to:

(a) the department of labor and industry to be used for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud, and abuse under the workers' compensation program.

(7) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any individual or supply the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(8) The department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of public health and human services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

(d) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

(e) to the board of regents information required under 20-26-1111;

(f) to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

(g) to the department of transportation farm income information based on the most recent income tax return filed by an applicant applying for a refund under 15-70-223 or 15-70-362, provided that notice to the applicant has been given as provided in 15-70-223 and 15-70-362. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

History: En. Sec. 30, Ch. 181, L. 1933; re-en. Sec. 2295.30, R.C.M. 1935; amd. Sec. 1, Ch. 110, L. 1951; amd. Sec. 1, Ch. 253, L. 1967; amd. Sec. 180, Ch. 516, L. 1973; amd. Sec. 1, Ch. 346, L. 1977; R.C.M. 1947, 84-4931; amd. Sec. 1, Ch. 131, L. 1985; amd. Sec. 2, Ch. 358, L. 1989; amd. Sec. 1, Ch. 416, L. 1989; amd. Sec. 2, Ch. 20, L. 1993; amd. Sec. 1, Ch. 245, L. 1993; amd. Sec. 4, Ch. 410, L. 1993; amd. Sec. 4, Ch. 520, L. 1993; amd. Sec. 5, Ch. 529, L. 1995; amd. Sec. 48, Ch. 546, L. 1995; amd. Sec. 1, Ch. 461, L. 1999.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 127, L. 2001, repealed sec. 7, Ch. 461, L. 1999, which terminated the amendments to this section June 30, 2001. Effective March 26, 2001.

Cross-References

Audit of public assistance records, 53-2-104.
Misuse of public assistance information unlawful, 53-2-105.
Penalty for misuse of public assistance information, 53-2-106.
Public assistance — investigations by Department of Justice, Title 53, ch. 2, part 5.

15-30-304. Furnishing copy of federal return — copy of share of income, credit, and deductions schedule — copies of federal corrections — filing amended return required. Each taxpayer shall, upon request of the department, furnish a copy of the return for the corresponding year that the taxpayer has filed or may file with the federal government, showing the taxpayer's net income and how obtained and the several sources from which derived. If the amount of a taxpayer's taxable income is changed or corrected by the United States internal revenue service or other competent authority, the taxpayer shall file an amended Montana return with the department within 90 days after receiving notice of the change or correction. If a taxpayer files an amended federal income tax return changing or correcting the taxpayer's federal taxable income for a tax year, the taxpayer shall also file an amended Montana return with the department within 90 days after filing an amended federal income tax return. The department shall supply all necessary forms and shall, upon the request of the taxpayer, return all forms to the taxpayer after they have been examined by the department.

History: En. 84-4938 by Sec. 11, Ch. 260, L. 1955; amd. Sec. 2, Ch. 61, L. 1967; amd. Sec. 182, Ch. 516, L. 1973; R.C.M. 1947, 84-4938; amd. Sec. 1, Ch. 172, L. 1995; amd. Sec. 2, Ch. 68, L. 1999; amd. Sec. 5, Ch. 184, L. 1999.

Cross-References

Suspension of statute of limitations for failure to notify Department of change in federal return, 15-30-146.

15-30-305. Department rules. The department is hereby authorized to make such rules and to require such facts and information to be reported as it may deem necessary to enforce the provisions of this chapter.

History: En. Sec. 29, Ch. 181, L. 1933; re-en. Sec. 2295.29, R.C.M. 1935; amd. Sec. 179, Ch. 516, L. 1973; R.C.M. 1947, 84-4930.

15-30-306. Agreements with contiguous states. The department of revenue may, in its discretion, enter into reciprocal agreements with the taxing authorities of states contiguous to the state of Montana which tax the income of Montana residents earned in that state to provide that the tax imposed by this chapter on income derived by persons who are nonresidents of this state is not payable when such other state or states agree to grant similar treatment to residents of Montana.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(18).

15-30-307. Closing agreements. (1) The director of revenue or any person authorized in writing by him is authorized to enter into an agreement with any person relating to the liability of such person in respect to the tax imposed by this chapter for any taxable period.

(2) Any such agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under such agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, the agreement may not be annulled, modified, set aside, or disregarded.

History: En. 84-4959 by Sec. 2, Ch. 353, L. 1977; R.C.M. 1947, 84-4959.

15-30-308 and 15-30-309 reserved.

15-30-310. Authority to collect tax — offset — hearing. (1) The department shall collect taxes that are delinquent as determined under this chapter.

(2) To collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds due the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a hearing on the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before funds are available for offset.

(5) The department must provide the taxpayer with notice of the right to request a hearing under the contested case procedures of Title 2, chapter 4, on the matter of the offset action or the department intent to file a claim on behalf of a taxpayer. A request for hearing must be made within 30 days of the date of the notice and such hearing, if requested, must be held within 20 days.

History: En. Sec. 1, Ch. 160, L. 1985.

Cross-References

Function of State Auditor in offset of taxes against refunds or other amounts owing, 17-4-105.

15-30-311. Warrant for distraint. If any tax imposed by this chapter or any portion of such tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

History: En. Sec. 26, Ch. 181, L. 1933; re-en. Sec. 2295.26, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1947; amd. Sec. 176, Ch. 516, L. 1973; R.C.M. 1947, 84-4928; amd. Sec. 1, Ch. 167, L. 1979; amd. Sec. 12, Ch. 439, L. 1981; amd. Sec. 1, Ch. 570, L. 1981.

Cross-References

Warrant for withheld taxes, 15-30-208.

15-30-312. Jeopardy assessments. (1) If the department finds that the assessment or collection of the tax or a deficiency for any taxable year will be jeopardized in whole or in part by delay, it may mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the department may declare the taxable period of the taxpayer immediately terminated and shall mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax based on the period declared terminated.

(2) A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once, including the issuance of a warrant for distraint as provided in Title 15, chapter 1, part 7.

History: En. 84-4928.1 by Sec. 2, Ch. 212, L. 1967; amd. Sec. 177, Ch. 516, L. 1973; R.C.M. 1947, 84-4928.1; amd. Sec. 13, Ch. 439, L. 1981.

Cross-References

Jeopardy assessment for withheld taxes, 15-30-204.

15-30-313. Soldiers' and sailors' relief. (1) The collection from any person in the military service, as defined by the Soldiers' and Sailors' Civil Relief Act of 1940, effective October 17, 1940, as amended October 6, 1942, of any tax prescribed by the state on the income of such person, whether falling due prior to or during his period of military service, shall be deferred for a period extending not more than 6 months after the termination of his period of military service if such person's ability to pay such tax is materially impaired by reason of such service.

(2) No interest on any amount of tax, collection of which is deferred for any period under this section and 15-30-314, and no penalty for nonpayment of such amount during such period shall accrue for such period of deferment by reason of such nonpayment. The running of any statute of limitations against the payment of such tax by any lawful means shall be suspended for the period of military service of any individual for whom the collection of such tax is deferred under this section and for an additional period of 1 year beginning with the day following the period of military service.

History: En. Sec. 1, Ch. 181, L. 1943; amd. Sec. 5, Ch. 34, L. 1977; R.C.M. 1947, 84-4926.

Cross-References

Special consideration allowed military personnel and veterans, Art. II, sec. 35, Mont. Const.

15-30-314. Stay of enforcement against military personnel. (1) Any such person may, during his period of military service or within 6 months thereafter, apply to a court for relief in respect of any tax obligation or any tax liability incurred by such person prior to his period of military service or in respect of any such obligation or liability, whether falling due prior to or during his period of military service. Any district court of the state after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of such obligation or liability or to pay such tax or assessment has not been materially affected by reason of his military service, may grant a stay of the enforcement thereof during the applicant's period of military service and from the date of termination of such period of military service or from the date of application, if made after such service, for a period of time equal to the period of military service of the applicant or any part of such period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of such period of military service or from the date of application, as the case may be, in equal periodic installments during such extended period at such rate of interest as may be prescribed for such tax obligation or tax liability or assessment if paid when due and subject to such other terms as may be just.

(2) When any court has granted a stay as provided in this section, no fine or penalty shall accrue during the period the terms and conditions of such stay are complied with by reason of the failure to comply with the terms or conditions of the tax obligation, tax liability, or assessment in respect of which such stay was granted.

History: En. Sec. 2, Ch. 181, L. 1943; R.C.M. 1947, 84-4927.

Cross-References

Special consideration allowed military personnel and veterans, Art. II, sec. 35, Mont. Const.

15-30-315. Repealed. Sec. 54, Ch. 439, L. 1981.

History: En. Sec. 1, Ch. 130, L. 1965; amd. Sec. 193, Ch. 516, L. 1973; R.C.M. 1947, 84-4958.

15-30-316. Failure to file return or report — order to show cause — action by department. (1) Whenever a taxpayer fails to file a return or report within 90 days after the due date and refuses to file the return or report within 60 days after written notification or demand from the department, the department may file a petition in the district court for an order to show cause.

(2) The written notification or demand:

(a) shall recite the facts and circumstances showing the failure of the taxpayer to file the return or report;

(b) must be sent by certified mail to the address of the taxpayer as shown on the records of the department and to any other address of the taxpayer known to the department; and

(c) shall inform the taxpayer that upon failure to receive the return or report within 60 days from the date of the notification or demand the department will seek an order to show cause in district court.

(3) A petition filed under the authority of subsection (1) must be verified and shall set forth in detail the facts and circumstances showing the failure of the taxpayer to file the return or report and the response, if any, of the taxpayer to the written notification and demand.

(4) When a verified petition is filed under the authority of subsection (1), the court shall review the petition to determine if the department has made a prima facie showing that an order to show cause should be issued and, if such a showing has been made, shall issue an order directed to the taxpayer to file the return or report within 30 days of the order, or to show cause, at a special time and place, why the return or report should not be filed.

(5) A copy of the petition and a certified copy of the order must be served upon the taxpayer. Service may be made pursuant to the provisions of Rule 4D(1)(b), M.R.Civ.P. If the taxpayer fails to acknowledge service, the sheriff shall serve a copy of the petition and a certified copy of the order on the taxpayer pursuant to Rule 4D(2) or (3), M.R.Civ.P.

(6) At the hearing on the order to show cause, evidence produced that the department's records show that the return or the report has not been filed is prima facie evidence that the return or report has not been filed.

(7) Upon finding by a preponderance of the evidence that the taxpayer has not filed the return or report as required by law, the court may issue a further order compelling the filing of the return or report, and the taxpayer's failure to comply with the order may thereafter be proceeded against as a contempt.

History: En. Sec. 1, Ch. 35, L. 1985.

Cross-References

Contempt proceedings, Title 3, ch. 1, part 5.
Verification of pleadings, 25-4-203.
Montana Rules of Civil Procedure, Title 25, ch. 20.
Prima facie evidence defined, 26-1-102.

15-30-317 through 15-30-320 reserved.

15-30-321. Penalties for violation of chapter. (1) Any individual, corporation, or partnership or any officer or employee of any corporation or member or employee of any partnership who purposely fails to file a return or files, renders, or signs a false or fraudulent return or statement or supplies false or fraudulent information is liable to a penalty of not less than $1,000 and not more than $5,000, to be recovered in the name of the state by action in a court of competent jurisdiction.

(2) An individual, corporation, or partnership or an officer or employee of a corporation or member or employer of a partnership who, with intent to evade any tax or requirement of this chapter or any lawful requirement of the department under this chapter, purposely fails to pay the tax or to file or sign any return or to supply information within the time required by this chapter or who with an intent to evade, purposely files or signs a false or fraudulent return or statement or supplies false or fraudulent information is guilty of a misdemeanor and upon conviction must be fined not more than $1,000 or be imprisoned for not more than 1 year, or both, at the discretion of the court.

(3) With respect to the imposition of a civil penalty, evidence produced by the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied as required under the provisions of this chapter is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

History: En. Sec. 24, Ch. 181, L. 1933; re-en. Sec. 2295.24, R.C.M. 1935; amd. Sec. 1, Ch. 163, L. 1955; amd. Sec. 3, Ch. 201, L. 1963; amd. Sec. 2, Ch. 347, L. 1969; amd. Sec. 175, Ch. 516, L. 1973; amd. Sec. 1, Ch. 65, L. 1975; R.C.M. 1947, 84-4924; amd. Sec. 3, Ch. 648, L. 1979; amd. Sec. 49, Ch. 370, L. 1987; amd. Sec. 10, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-30-322. Repealed. Sec. 5, Ch. 520, L. 1993.

History: En. Sec. 27, Ch. 181, L. 1933; re-en. Sec. 2295.27, R.C.M. 1935; amd. Sec. 178, Ch. 516, L. 1973; R.C.M. 1947, 84-4929.

15-30-323. Penalty and interest for deficiency. (1) If the payment required by 15-30-142(6) is not made within 60 days or if the understatement is due to negligence on the part of the taxpayer but without fraud, the penalty imposed in 15-1-216(1)(c) must be added to the amount of the deficiency. Interest on the additional assessment must be computed as provided in 15-1-216. Except as otherwise provided in this subsection, the interest in all cases must be computed from the date the return and tax were originally due as distinguished from the due date as it may have been extended to the date of payment.

(2) If the time for filing a return is extended, the taxpayer shall pay in addition interest on the tax due, as provided in 15-1-216, from the time when the return was originally required to be filed to the time of payment.

History: En. Sec. 14, Ch. 181, L. 1933; re-en. Sec. 2295.14, R.C.M. 1935; amd. Sec. 1, Ch. 34, L. 1949; amd. Sec. 8, Ch. 260, L. 1955; amd. Sec. 2, Ch. 227, L. 1957; amd. Sec. 5, Ch. 253, L. 1959; amd. Sec. 1, Ch. 201, L. 1963; amd. Sec. 1, Ch. 347, L. 1969; amd. Sec. 1, Ch. 450, L. 1973; amd. Sec. 171, Ch. 516, L. 1973; amd. Sec. 1, Ch. 159, L. 1977; R.C.M. 1947, 84-4914(part); amd. Sec. 3, Ch. 477, L. 1981; amd. Sec. 13, Ch. 634, L. 1993 (voided by I.R. No. 112, Nov. 8, 1994); amd. Sec. 11, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-30-324. Time limitations for prosecution. A prosecution for an offense under 15-30-321 must be commenced within 5 years after the offense is committed.

History: En. Sec. 4, Ch. 648, L. 1979.

15-30-325 through 15-30-330 reserved.

15-30-331. Certified copies of tax returns to taxpayer — fee. (1) Certified copies of returns filed for income tax under 15-30-144 may be furnished by the department of revenue to the taxpayer or his duly authorized representative upon payment of 50 cents for each page.

(2) All moneys collected under this section shall be required to reimburse the department for costs involved in the preparation of the copies. All such moneys collected shall go into the general fund.

(3) The provisions of this section shall apply to all returns on file and all returns to be filed hereafter.

History: (1)En. Sec. 1, Ch. 187, L. 1965; amd. Sec. 20, Ch. 516, L. 1973; Sec. 84-732, R.C.M. 1947; (2)En. Sec. 3, Ch. 187, L. 1965; amd. Sec. 22, Ch. 516, L. 1973; Sec. 84-734, R.C.M. 1947; (3)En. Sec. 4, Ch. 187, L. 1965; Sec. 84-735, R.C.M. 1947; R.C.M. 1947, 84-732(part), 84-734(part), 84-735.

Parts 4 and 5 reserved

Part 6

Particular Income Tax Applications

15-30-601. *(Temporary)* **Short title.** Sections 15-30-601 through 15-30-605 may be cited as the "Montana Farm and Ranch Risk Management Act". *(Terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)*

History: En. Sec. 1, Ch. 262, L. 2001.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

Applicability: Section 8, Ch. 262, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

Contingent Termination: Section 9, Ch. 262, L. 2001, provided: "[This act] [15-30-601 through 15-30-605 and 15-30-111(2)(p)] terminates on certification by the director of the department of revenue to the governor of the passage and approval of a similar program and deduction at the federal level. The director shall provide a copy of the certification to the secretary of state and the code commissioner."

15-30-602. *(Temporary)* **Definitions.** As used in 15-30-601 through 15-30-605, the following definitions apply:

(1) "Account" means a Montana farm and ranch risk management account.

(2) "Disqualification period" means any period of 2 consecutive tax years in which the taxpayer is not engaged in an eligible agricultural business.

(3) (a) "Eligible agricultural business" means the business of agricultural production, as agricultural is defined in 15-1-101, including silviculture, conducted by an individual or family farm corporation that files net farm income reports for tax purposes as required by the United States internal revenue service.

(b) The term does not mean the business of processing, transporting, or marketing agricultural products.

(4) "Family farm corporation" means a corporation that consists of immediate family members.

(5) "Immediate family members" means family members that are within the second degree of consanguinity or affinity.

(6) "Individual" means a human being and does not include an estate or trust. *(Terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)*

History: En. Sec. 2, Ch. 262, L. 2001.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

Applicability: Section 8, Ch. 262, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

Contingent Termination: Section 9, Ch. 262, L. 2001, provided: "[This act] [15-30-601 through 15-30-605 and 15-30-111(2)(p)] terminates on certification by the director of the department of revenue to the governor of the passage and approval of a similar program and deduction at the federal level. The director shall provide a copy of the certification to the secretary of state and the code commissioner."

15-30-603. *(Temporary)* **Montana farm and ranch risk management account — deposits — exclusion from income.** (1) An individual or a family farm corporation engaged in an eligible agricultural business may create a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, to use as a risk management tool for the individual's or family farm corporation's agricultural business. The number of risk management accounts that may be created is limited to one for each individual or family farm corporation.

(2) Deposits to the account may be excluded from adjusted gross income as provided in 15-30-111 in an amount not to exceed the lesser of 20% of the taxpayer's net income

attributable to agricultural business included in federal adjusted gross income or $20,000 a year. For the purposes of this section, a taxpayer is considered to have made a deposit to an account if the deposit is made:

(a) during the tax year; or

(b) for a specific tax year if it is made within 3 ½ months after the close of the tax year.

(3) A deposit not distributed within 5 years is considered to have been distributed to the taxpayer as provided in 15-30-605.

(4) A portion of a deposit distributed within 6 months of the date deposited is income in the year for which an exclusion was taken. The taxpayer shall file a return or amended return as necessary to report the income in the appropriate year. *(Terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)*

History: En. Sec. 3, Ch. 262, L. 2001.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

Applicability: Section 8, Ch. 262, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

Contingent Termination: Section 9, Ch. 262, L. 2001, provided: "[This act] [15-30-601 through 15-30-605 and 15-30-111(2)(p)] terminates on certification by the director of the department of revenue to the governor of the passage and approval of a similar program and deduction at the federal level. The director shall provide a copy of the certification to the secretary of state and the code commissioner."

15-30-604. *(Temporary)* **Montana farm and ranch risk management account — creation — administration.** (1) A Montana farm and ranch risk management account is a trust created or organized in the state for the exclusive benefit of the taxpayer. The account trustee must be a financial institution, as defined in 15-62-103, supervised by the United States or by the state of Montana. The trust must be created by written instrument.

(2) The trustee may not accept any deposit for any tax year in excess of the amount allowed as a deduction under 15-30-603.

(3) The trustee shall report to the department if a portion of a deposit is distributed within 6 months of the date of deposit.

(4) The assets of the trust must consist entirely of cash or of obligations that have adequate stated interest and that pay the interest at least annually.

(5) All income of the trust must be distributed currently to the grantor.

(6) The assets of the trust may not be commingled with other property except in a common trust fund or common investment fund. *(Terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)*

History: En. Sec. 4, Ch. 262, L. 2001.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

Applicability: Section 8, Ch. 262, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

Contingent Termination: Section 9, Ch. 262, L. 2001, provided: "[This act] [15-30-601 through 15-30-605 and 15-30-111(2)(p)] terminates on certification by the director of the department of revenue to the governor of the passage and approval of a similar program and deduction at the federal level. The director shall provide a copy of the certification to the secretary of state and the code commissioner."

15-30-605. *(Temporary)* **Montana farm and ranch risk management account — distributions.** (1) Distributions from the account may be used for any purpose the taxpayer chooses.

(2) Distributions from an account:

(a) are first attributable to income and then to other deposits; and

(b) must be considered to be made from deposits in the order in which the deposits were made, beginning with the earliest deposits. Income is considered to be deposited on the date the income is received by the account.

(3) All distributions from the account are taxable unless:

(a) the deposit, or that portion of the deposit to which the distribution is attributable, was not excluded from adjusted gross income for the tax year the deposit was made; or

(b) the distribution has already been taxed because it was considered a distribution as provided in subsection (4).

(4) (a) (i) Amounts that are not distributed within the 5-year eligibility period established in subsection (4)(a)(ii) are considered to be distributed to the taxpayer on the last day of the tax year in which the fifth anniversary of the deposit occurs. The distribution is taxable, and a penalty equal to 10% of the tax due on the distributed amount is added to the tax as a penalty.

(ii) The 5-year eligibility period for withdrawal of a deposit without penalty is the due date, including extensions, for the filing of a tax return required by this chapter or, if the taxpayer files earlier, the date the taxpayer files the return for the tax year in which the fifth anniversary of the deposit occurs.

(b) At the end of the first disqualification period after a period in which the taxpayer was engaged in eligible agricultural business, the balance of the account is considered to be distributed to the taxpayer and is taxable to the taxpayer. *(Terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)*

History: En. Sec. 5, Ch. 262, L. 2001.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

Applicability: Section 8, Ch. 262, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

Contingent Termination: Section 9, Ch. 262, L. 2001, provided: "[This act] [15-30-601 through 15-30-605 and 15-30-111(2)(p)] terminates on certification by the director of the department of revenue to the governor of the passage and approval of a similar program and deduction at the federal level. The director shall provide a copy of the certification to the secretary of state and the code commissioner."

Parts 7 through 10 reserved

Part 11
Pass-Through Entities

15-30-1101. Definition of "small business corporation". (1) Except as provided in subsection (2), the term "small business corporation" is synonymous with "S. corporation" as defined in 15-30-101 and means a corporation for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is in effect.

(2) A corporation that would otherwise be a small business corporation may continue to be subject to the taxes imposed by Title 15, chapter 31, if all of the following conditions are met:

(a) on December 31, 1991, the corporation was doing business in Montana and had a valid subchapter S. corporation election but had not elected to be taxed as a Montana small business corporation;

(b) after December 31, 1991, the corporation has not filed as a Montana small business corporation; and

(c) the corporation files a corporate license tax return, as required by 15-31-111, reporting all income or loss as determined under Title 15, chapter 31, and attaches a copy of the federal subchapter S. corporate tax return.

History: En. 84-1501.1 by Sec. 1, Ch. 122, L. 1959; amd. Sec. 1, Ch. 405, L. 1977; R.C.M. 1947, 84-1501.1(a), (b); amd. Sec. 1, Ch. 667, L. 1983; amd. Sec. 1, Ch. 534, L. 1989; amd. Sec. 6, Ch. 807, L. 1991; amd. Sec. 13, Ch. 143, L. 2001; Sec. 15-31-201, MCA 1999; redes. 15-30-1101 by Sec. 16(2), Ch. 143, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 143 in (1) substituted definition of "small business corporation for "means a corporation that has made a valid election under subchapter S. of Chapter 1 of the Internal Revenue code. A small business corporation shall attach a copy of the approved federal election with the Montana return filed for the first taxable year the federal election is effective." Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

15-30-1102. Income or license tax involving pass-through entities — information returns required. (1) Except as otherwise provided:

(a) a partnership is not subject to taxes imposed in Title 15, chapter 30 or 31;

(b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and

(c) a disregarded entity is not subject to the taxes imposed in Title 15, chapter 30 or 31.

(2) Except as otherwise provided, each partner of a partnership described in subsection (1)(a), each shareholder of an S. corporation described in subsection (1)(b), and each partner, shareholder, manager, member, or other owner of an entity described in subsection (1)(c) is subject to the taxes provided in this chapter, if an individual, and to the taxes provided in Title 15, chapter 31, if a C. corporation.

(3) Income realized for federal income tax purposes by a financial institution that has elected to be treated as an S. corporation under subchapter S. of Chapter 1 of the Internal Revenue Code and by its shareholders that is attributable to the financial institution's change from the bad debt reserve method of accounting provided in section 585 of the Internal Revenue Code, 26 U.S.C. 585, is not taxable under Title 15, chapter 30 or 31, to the extent that the aggregate deductions allowed for federal income tax purposes under 26 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under 15-31-114(1)(b)(i).

(4) (a) A partnership that has Montana source income shall on or before the 15th day of the 4th month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal partnership return. The return must include:

(i) the name, address, and social security or federal identification number of each partner;

(ii) the partnership's Montana source income;

(iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(v) any other information the department prescribes.

(b) An S. corporation that has Montana source income shall on or before the 15th day of the 3rd month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal S. corporation return. The return must include:

(i) the name, address, and social security or federal identification number of each shareholder;

(ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(iv) any other information the department prescribes.

(c) A disregarded entity that has Montana source income shall furnish the information and file the returns the department prescribes. The return must include:

(i) the name, address, and social security or federal identification number of each manager, member, or other owner during the tax year;

(ii) the entity's Montana source income; and

(iii) any other information the department prescribes.

(d) (i) Except as provided in subsection (4)(d)(ii), a pass-through entity that fails to file an information return required by this section by the due date, including any extension, must be assessed a late filing penalty of $10 multiplied by the number of the entity's partners, shareholders, managers, members, or other owners at the close of the tax year for each month or fraction of a month, not to exceed 5 months, that the entity fails to file the information return. The department may waive the penalty imposed by this subsection (4)(d)(i) as provided in 15-1-206.

(ii) The penalty imposed under subsection (4)(d)(i) may not be imposed on a pass-through entity that has 10 or fewer partners, shareholders, managers, members, or other owners each of whom:

(A) is an individual, an estate of a deceased individual, or a C. corporation;

(B) has filed any required return or other report with the department by the due date, including any extension of time, for the return or report; and

(C) has paid all taxes when due.

History: En. Sec. 11, Ch. 181, L. 1933; re-en. Sec. 2295.11, R.C.M. 1935; amd. Sec. 5, Ch. 260, L. 1955; amd. Sec. 4, Ch. 253, L. 1959; R.C.M. 1947, 84-4911; amd. Sec. 9, Ch. 143, L. 2001; Sec. 15-30-133, MCA 1999; redes. 15-30-1102 by Sec. 16(3), Ch. 143, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 143 in (1) at beginning substituted exception clause and (1)(a) providing partnership not subject to taxes imposed by Title 15, chapter 30 or 31, for former text that read: "Individuals carrying on a business in partnership shall be liable for income tax only in their individual capacity. There shall be included, in computing the net income of each partner, his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or if his net income for such taxable year is computed upon the basis of a period different from that upon the basis for which the net income of the partnership is computed, then there shall be included his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed. Taxpayers who are members of partnerships are required by the department to furnish a copy of their federal partnership return"; inserted (1)(b) and (1)(c) regarding entities not subject to tax imposed in Title 15, chapter 30 or 31; inserted (2) regarding entities subject to taxes provided in Title 15, chapter 30 or 31; inserted (3) regarding taxation of financial institution; inserted (4) requiring certain entities to file information return; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

15-30-1103 through 15-30-1110 reserved.

15-30-1111. Taxation of partners, shareholders, managers, and members. (1) A partner of a partnership that has Montana source income and a resident who is a partner of a partnership during any part of the tax year shall, in computing net income, include the partner's distributive share of partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit as determined pursuant to section 704 of the Internal Revenue Code (26 U.S.C. 704) and shall furnish a copy of the partner's federal schedule of the partner's share of income, deductions, and credits when filing the Montana tax return.

(2) A shareholder of an S. corporation that has Montana source income and a resident who is a shareholder of an S. corporation during any part of the tax year shall, in computing net income, include the shareholder's pro rata share of separately and nonseparately stated S. corporation income, loss, deduction, or credit as determined pursuant to sections 1366 and 1377 of the Internal Revenue Code (26 U.S.C. 1366 and 1377) and shall furnish a copy of the shareholder's federal schedule of the shareholder's share of income, deductions, and credits when filing the Montana tax return.

(3) A partner, shareholder, manager, member, or other owner of a disregarded entity that has Montana source income and a resident who is a partner, shareholder, manager, member, or other owner of a disregarded entity during any part of the tax year shall, in computing net income, include the disregarded entity's income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit.

History: En. Sec. 3, Ch. 143, L. 2001.

Compiler's Comments

Effective Date: Section 18(1), Ch. 143, L. 2001, provided that this section is effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

15-30-1112. Composite returns and tax. (1) A partnership or S. corporation may elect to file a composite return and pay a composite tax on behalf of participants. A participant is a partner, shareholder, manager, or member who:

(a) is a nonresident individual whose only Montana source income for the tax year is from the entity and other partnerships or S. corporations electing to file the composite return and pay the composite tax on behalf of that partner, shareholder, manager, or member; and

(b) consents to be included in the filing.

(2) (a) Each participant's composite tax liability is the product obtained by:

(i) determining the tax that would be imposed, using the rates specified in 15-30-103, on the sum obtained by subtracting the allowable standard deduction for a single individual and one exemption allowance from the participant's share of the entity's income from all sources as determined for federal income tax purposes; and

(ii) multiplying that amount by the ratio of the entity's Montana source income to the entity's income from all sources for federal income tax purposes.

(b) A participant's share of the entity's income is the aggregate of the participant's share of the entity's income, gain, loss, or deduction or item of income, gain, loss, or deduction.

(3) The composite tax is the sum of each participant's composite tax liability.

(4) The electing entity:

(a) shall remit the composite tax to the department;

(b) must be responsible for any assessments of additional tax, penalties, and interest, which additional assessments must be based on the total liability reflected in the composite return;

(c) shall represent the participants in any appeals, claims for refund, hearing, or court proceeding in any matters relating to the filing of the composite return;

(d) shall make quarterly estimated tax payments as prescribed by 15-30-241 computed separately for each participant included in the filing of a composite return; and

(e) shall retain powers of attorney executed by each participant included in the composite return, authorizing the entity to file the composite return and to act on behalf of each participant.

(5) The composite return must be made on forms the department prescribes and filed on or before the due date, including extensions, for filing the entity information return. The composite return is in lieu of an individual income tax return required under 15-30-142 and 15-30-144.

(6) The composite tax is in lieu of the tax imposed under 15-30-103 and 15-30-105.

(7) The department may adopt rules that are necessary to implement and administer this section.

History: En. Sec. 4, Ch. 143, L. 2001.

Compiler's Comments

Effective Date: Section 18(1), Ch. 143, L. 2001, provided that this section is effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

15-30-1113. *(Temporary)* **Consent or withholding — notice.** (1) A pass-through entity required to file an information return provided in 15-30-1102 that has a partner, shareholder, manager, member, or other owner who is a nonresident individual shall:

(a) on or before the due date, including extensions, for the information return:

(i) file a composite return with respect to the individual nonresident; or

(ii) file an agreement of the individual nonresident to:

(A) file a return in accordance with the provisions of 15-30-142;

(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

(C) be subject to the personal jurisdiction of the state for the collection of income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; and

(b) within the later of 180 days after the due date, including extensions, for the information return or the date the notice is sent as provided in subsection (2), remit an amount equal to the highest marginal tax rate in effect under 15-30-103 multiplied by the share of

Montana source income reflected on the pass-through entity's information return of each nonresident individual for whom a composite return or agreement provided in subsection (1)(a) was not filed.

(2) As soon as practical, but not later than 60 days after the due date, including extensions, for the information return, the department shall send notice to the pass-through entity of the need to comply with subsection (1) and that the pass-through entity may be subject to penalties under 15-30-1102. If the department does not send notice, the pass-through entity is not subject to withholding.

(3) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to subsection (1)(b) must be considered as a payment on the account of the nonresident individual for the income tax imposed on the nonresident individual for the tax year pursuant to 15-30-105.

(4) A pass-through entity is entitled to recover a payment made pursuant to subsection (1)(b) from the partner, shareholder, manager, member, or other owner on whose behalf the payment was made. *(Terminates December 31, 2002—sec. 20, Ch. 143, L. 2001.)*

15-30-1113. *(Effective January 1, 2003)* **Consent or withholding.** (1) A pass-through entity that is required to file an information return as provided in 15-30-1102 and that has a partner, shareholder, manager, member, or other owner who is a nonresident individual shall, on or before the due date, including extensions, for the information return:

(a) file a composite return with respect to the individual nonresident;

(b) file an agreement of the individual nonresident to:

(i) file a return in accordance with the provisions of 15-30-142;

(ii) timely pay all taxes imposed with respect to income of the pass-through entity; and

(iii) be subject to the personal jurisdiction of the state for the collection of income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(c) remit an amount equal to the highest marginal tax rate in effect under 15-30-103 multiplied by the nonresident individual's share of Montana source income reflected on the pass-through entity's information return.

(2) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to subsection (1)(c) must be considered as a payment on the account of the nonresident individual for the income tax imposed on the nonresident individual for the tax year pursuant to 15-30-105.

(3) A pass-through entity is entitled to recover a payment made pursuant to subsection (1)(c) from the partner, shareholder, manager, member, or other owner on whose behalf the payment was made.

History: En. Secs. 5, 6, Ch. 143, L. 2001.

Compiler's Comments

Effective Dates: Section 18(1), Ch. 143, L. 2001, provided that [section 5], the temporary version of this section, is effective October 1, 2001.

Section 18(3), Ch. 143, L. 2001, provided that the permanent version of this section is effective January 1, 2003.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

Termination: Section 20, Ch. 143, L. 2001, provided: "[Section 5] [15-30-1113, the temporary version] terminates December 31, 2002."

15-30-1114. Review of pass-through entity taxation by department. (1) The department shall review, with the assistance of interested parties, the reporting and taxation of income that is flowing through pass-through entities and the method of reporting and taxation of this income in states other than Montana and shall consider recommendations concerning the methodology that Montana should use to ensure fair and equitable taxation of income that flows through pass-through entities to other entities.

(2) The department shall report to the revenue and transportation interim committee at least once each year on the findings and recommendations of the review conducted under subsection (1).

History: En. Sec. 15, Ch. 143, L. 2001.

Compiler's Comments

Effective Date: Section 18(1), Ch. 143, L. 2001, provided that this section is effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

15-30-1115 through 15-30-1120 reserved.

15-30-1121. Small business option unavailable on dissolution — exception. In the case of corporation dissolution, no benefits may be taken under the "small business act" or under any law or regulation shifting the tax to be paid from the corporation to the shareholders unless all shareholders agree to assume personal income tax liability the same as they would bear if they were residents of this state.

History: En. Sec. 2, Ch. 60, L. 1963; R.C.M. 1947, 84-1501.3; Sec. 15-31-203, MCA 1999; redes. 15-30-1121 by Sec. 16(2), Ch. 143, L. 2001.

CHAPTER 31

CORPORATION LICENSE OR INCOME TAX

Part 1 — Corporation License Tax
Rate and Return

15-31-101. Organizations subject to tax.
15-31-102. Organizations exempt from tax — unrelated business income not exempt.
15-31-103. Research and development firms exempt from taxation — application.
15-31-104 through 15-31-110 reserved.
15-31-111. Return to be filed.
15-31-112. Taxable period.
15-31-113. Gross income and net income.
15-31-114. Deductions allowed in computing income.
15-31-115. Reaffirmation of bond income inclusion in definition of net income for corporation license tax purposes.
15-31-116. Repealed.
15-31-117. Tax deductibility.
15-31-118. Taxable liability on termination of independent liability fund.
15-31-119. Net operating losses — carryovers and carrybacks.
15-31-120 reserved.
15-31-121. Rate of tax — minimum tax.
15-31-122. Alternative gross sales tax.
15-31-123. Investment credit.
15-31-124. New or expanded industry credit — definitions.
15-31-125. Determination of tax credit.
15-31-126. Limitation.
15-31-127. Department duties.
15-31-128 through 15-31-130 reserved.
15-31-131. Credit for dependent care assistance and referral services.
15-31-132. Tax credit for providing disability insurance for employees.
15-31-133. Credit for day-care facilities.
15-31-134 reserved.
15-31-135. Contribution by small business corporation.
15-31-136. Contribution by partnership.
15-31-137. Small business corporation and partnership credit for alternative fuel conversion.
15-31-138 through 15-31-140 reserved.
15-31-141. Consolidated returns — computation and procedure.
15-31-142. Reports upon merger of corporations.
15-31-143. Return and payment on corporate dissolution.
15-31-144 through 15-31-149 reserved.
15-31-150. Credit for research expenses and research payments.
15-31-151. Credit for preservation of historic buildings.

15-31-152 through 15-31-160 reserved.
15-31-161. Credit for contribution by corporations to qualified endowment.
15-31-162. Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment.
15-31-163 through 15-31-169 reserved.
15-31-170. Credit for contributions to affordable housing revolving loan account

Part 2 — Small Business Corporations (Renumbered and Repealed)

15-31-201. Renumbered 15-30-1101.
15-31-202. Repealed.
15-31-203. Renumbered 15-30-1121.
15-31-204. Repealed.
15-31-205. Repealed.
15-31-206. Repealed.
15-31-207. Repealed.
15-31-208. Repealed.
15-31-209. Repealed.

Part 3 — Allocation and Apportionment of Income

15-31-301. Corporations subject to allocation and apportionment.
15-31-302. Definitions.
15-31-303. When taxable in another state.
15-31-304. Allocation of nonbusiness income.
15-31-305. Apportionment of business income.
15-31-306. Definition of property factor.
15-31-307. Values used for property factor.
15-31-308. Definition of payroll factor.
15-31-309. Payroll factor for compensation in this state.
15-31-310. Definition of sales factor.
15-31-311. Sales factor for sales in this state.
15-31-312. Apportionment formula — unitary business provisions.
15-31-313. Rules.
15-31-314 through 15-31-320 reserved.
15-31-321. Definitions.
15-31-322. Water's-edge election.
15-31-323. Apportionment factors.
15-31-324. Water's-edge election period — consent.
15-31-325. Treatment of dividends.
15-31-326. Domestic disclosure spreadsheet.

Part 4 — Corporation Income Tax

15-31-401. Application of license and income taxes.
15-31-402. Short title — administration of part.
15-31-403. Rate of tax imposed — income from sources within state defined — alternative tax.
15-31-404. Offset for license taxes — income tax collected considered license tax.
15-31-405. Information return — period for assessment of tax.
15-31-406. License tax sections incorporated by reference.
15-31-407. Employment of personnel — rules.
15-31-408. Repealed.

Part 5 — Administration and Collection

15-31-501. Department rules.
15-31-502. Assessment and payment of tax — estimated tax payment — amount of required installments.
15-31-503. Deficiency assessment — notice — interest.
15-31-504. Estimated tax on failure to file.
15-31-505. Subpoenas — investigation of income, and shifting.
15-31-506. Copy of federal return required — report of amended federal return.
15-31-507. Repealed.
15-31-508. Repealed.
15-31-509. Periods of limitation.
15-31-510. Estimated payments — tax returns — interest.
15-31-511. Confidentiality of tax records.
15-31-512 through 15-31-520 reserved.
15-31-521. Closing agreements.
15-31-522. When immediate payment demanded.
15-31-523. Suspension or forfeiture on delinquency.

15-31-524. Reviver of corporation after suspension or forfeiture.
15-31-525. Levy upon and sale of property.
15-31-526. Action by attorney general.
15-31-527. Repealed.
15-31-528 through 15-31-530 reserved.
15-31-531. Credit for overpayment — interest on overpayment.
15-31-532. Application for refund — appeal from denial.
15-31-533 through 15-31-540 reserved.
15-31-541. Site of failure to act — evidence.
15-31-542. Repealed.
15-31-543. Penalties.
15-31-544. Action on false or fraudulent return.
15-31-545. Delinquent penalty for corporate taxpayers.
15-31-546 through 15-31-550 reserved.
15-31-551. Certified copies of corporation license tax returns to taxpayer — fee.
15-31-552. Corporation license dissolution or withdrawal certificates and tax clearance certificates furnished.
15-31-553. Fees to reimburse department for costs — deposit in general fund.
15-31-554. Returns to which sections apply.

Part 6 — Lists of Corporations

15-31-601. Repealed.
15-31-602. Repealed.
15-31-603. List of entities furnished by secretary of state.
15-31-604 through 15-31-607. Repealed.

Part 7 — Banks and Savings and Loan Associations

15-31-701. Repealed.
15-31-702. Repealed.
15-31-703. Moneyed capital and shares of banks exempt.

Part 8 — Foreign Capital Depository—Assessment

15-31-801. State revenue from depository — purpose and preference.
15-31-802. Tax status — exemption guarantees.
15-31-803. State revenue — assessment — collection — distribution.
15-31-804. Revenue audits — charges.
15-31-805. Deficiency assessment — notice — penalty and interest.
15-31-806. Right of appeal.
15-31-807. Limitation on penalty and interest.
15-31-808. Action by attorney general.

Chapter Cross-References

Reservation of power to tax certain persons and property within land purchased by United States under Art. I, sec. 8, part 17, U.S. Const., 2-1-202.

Reservation of power to tax certain persons and property within Glacier National Park, 2-1-205.

Reservation of power to tax certain persons and property within land ceded to United States for Fort Peck Dam, 2-1-209.

Reservation of power to tax certain persons and property within land purchased by United States for national forest purposes, 2-1-210.

Capital gains or dividend income exempt — investment in small business investment company, Title 15, ch. 33, part 1.

Income derived by municipality from property acquired for airport purposes exempt, 67-10-406.

Income derived by airport authority from airport property exempt, 67-11-306.

Tax on companies regulated by Public Service Commission to fund Consumer Counsel, 69-1-223.

Income tax deduction for land sale to beginning farmers, 80-12-211.

Tax-exempt agricultural loan authority bonds, 80-12-305.

Tax credits for investment in Montana capital company, 90-8-202, 90-8-203.

Part 1

Corporation License Tax Rate and Return

15-31-101. Organizations subject to tax. (1) The term “corporation” includes an association, joint-stock company, common-law trust or business trust that does business in an organized capacity, all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United

States, and any limited liability company, limited liability partnership, partnership, or other entity that is treated as an association for federal income tax purposes and that is not a disregarded entity.

(2) The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided, every corporation engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state the percentage or percentages of its total net income for the preceding taxable year at the rate set forth in this chapter. In the case of corporations having income from business activity which is taxable both within and outside of this state, the license fee must be measured by the net income derived from or attributable to Montana sources as determined under part 3. Except as provided in 15-31-502, this tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation. However, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

(4) Every bank organized under the laws of the state of Montana, of any other state, or of the United States and every savings and loan association organized under the laws of this state or of the United States is subject to the Montana corporation license tax provided for under this chapter. A foreign capital depository chartered under the laws of Montana is not subject to the Montana corporation license tax provided for under this chapter until October 1, 2012. For taxable years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548).

History: (1), (3)En. Sec. 1, Ch. 79, L. 1917; Subd. 16, amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R.C.M. 1921; amd. Sec. 1, Ch. 166, L. 1933; re-en. Sec. 2296, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965; amd. Sec. 1, Ch. 4, Ex. L. 1967; amd. Sec. 1, Ch. 11, Ex. L. 1969; amd. Sec. 1, Ch. 16, L. 1971; amd. Sec. 1, Ch. 333, L. 1971; amd. Sec. 1, Ch. 5, Ex. L. 1971; amd. Sec. 1, Ch. 7, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 468, L. 1973; amd. Sec. 1, Ch. 484, L. 1973; amd. Sec. 1, Ch. 5, L. 1974; amd. Sec. 1, Ch. 257, L. 1977; Sec. 84-1501, R.C.M. 1947; (2)En. Sec. 4, Ch. 79, L. 1917; re-en. Sec. 2299, R.C.M. 1921; amd. Sec. 1, Ch. 146, L. 1923; re-en. Sec. 2299, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1947; amd. Sec. 1, Ch. 235, L. 1961; amd. Sec. 3, Ch. 186, L. 1963; amd. Sec. 1, Ch. 372, L. 1973; amd. Sec. 56, Ch. 516, L. 1973; amd. Sec. 1, Ch. 161, L. 1975; Sec. 84-1504, R.C.M. 1947; (4)En. Secs. 1, 3, Ch. 23, L. 1971; Secs. 84-1501.6, 84-1501.7, R.C.M. 1947; R.C.M. 1947, 84-1501(part), 84-1501.6(part), 84-1501.7(part), 84-1504(part); amd. Sec. 2, Ch. 634, L. 1979; amd. Sec. 3, Ch. 664, L. 1979; amd. Sec. 1, Ch. 622, L. 1987; amd. Sec. 4, Ch. 659, L. 1987; amd. Sec. 1, Ch. 9, Sp. L. June 1989; amd. Sec. 69, Ch. 382, L. 1997; amd. Sec. 11, Ch. 143, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 143 in (1) at end after "or the United States" inserted reference to any limited liability company or other entity that is not a disregarded entity that is treated as an association for tax purposes; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

Cross-References

Taxation of corporations operating free-trade zone, 30-15-104.
Payment of taxes on change from state to national banking corporation, 32-1-363.
Taxes on banks that have ceased to do business, 32-1-509.
Reciprocal taxation of building and loan associations, 32-2-105.
Taxation of credit unions, Title 32, ch. 3, part 9.
Taxation of insurers preempted by state, 33-2-707.
Certificate required from Department prior to corporate dissolution, 35-1-944.
Business trusts subject to tax, 35-5-205.
Certificate required from Department prior to reinstatement of dissolved corporation, 35-6-104.

15-31-102. Organizations exempt from tax — unrelated business income not exempt. (1) Except as provided in subsection (3), there may not be taxed under this title any income received by any:

(a) labor, agricultural, or horticultural organization;

(b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of the society, order, or association or their dependents;

(c) cemetery company owned and operated exclusively for the benefit of its members;

(d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e) business league, chamber of commerce, or board of trade not organized for profit, no part of the net income of which inures to the benefit of any private stockholder or individual;

(f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or similar organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

(i) cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;

(j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income from the property, and turning over the entire amount of the income, less expenses, to an organization that itself is exempt from the tax imposed by this title;

(k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members' wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep.

(l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions of section 991, et seq., of the Internal Revenue Code (26 U.S.C. 991, et seq.) and that has in effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes that election under federal law, each person who at any time is a shareholder of the corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods for which the election is effective.

(m) farmers' market association not organized for profit, no part of the net income of which inures to the benefit of any member, but that is organized for the sole purpose of providing for retail distribution of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;

(n) common trust fund as defined in 26 U.S.C. 584(a);

(o) foreign capital depository chartered under the provisions of 32-8-104, 32-8-201, and 32-8-202.

(2) In determining the license fee to be paid under this part, there may not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) Any unrelated business taxable income, as defined by section 512 of the Internal Revenue Code of 1954 (26 U.S.C. 512), as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than $100 must be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section shall file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue.

History: En. Sec. 1, Ch. 79, L. 1917; Subd. 16, amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R.C.M. 1921; amd. Sec. 1, Ch. 166, L. 1933; re-en. Sec. 2296, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92,

L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965; amd. Sec. 1, Ch. 4, Ex. L. 1967; amd. Sec. 1, Ch. 11, Ex. L. 1969; amd. Sec. 1, Ch. 16, L. 1971; amd. Sec. 1, Ch. 333, L. 1971; amd. Sec. 1, Ch. 5, Ex. L. 1971; amd. Sec. 1, Ch. 7, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 468, L. 1973; amd. Sec. 1, Ch. 484, L. 1973; amd. Sec. 1, Ch. 5, L. 1974; amd. Sec. 1, Ch. 257, L. 1977; R.C.M. 1947, 84-1501(part); amd. Sec. 1, Ch. 267, L. 1979; amd. Sec. 1, Ch. 284, L. 1979; amd. Sec. 1, Ch. 537, L. 1981; amd. Sec. 1, Ch. 604, L. 1985; amd. Sec. 72, Ch. 42, L. 1997; amd. Sec. 1, Ch. 368, L. 1997; amd. Sec. 70, Ch. 382, L. 1997.

Cross-References

Farm mutual insurers subject only to certain taxes, 33-4-409.
Insurance guaranty association exemptions, 33-10-107.
Life and health insurance guaranty association, 33-10-208.
Exemption of rural electric and telephone cooperatives, 35-18-503.
Exemption for water users' association, 85-6-108.

15-31-103. Research and development firms exempt from taxation — application. (1) A research and development firm organized to engage in business in the state of Montana for the first time is not subject to any of the taxes imposed by this chapter on net income earned from research and development activities during its first 5 taxable years of activity in Montana. For purposes of 15-31-401 and this section, "taxable year" means a research and development firm's taxable year for federal income tax purposes.

(2) (a) To be considered a research and development firm, the chief executive officer of the firm or his agent shall file with the department of revenue an application for treatment as a research and development firm.

(b) The application must be made on a form to be provided by the department. The form must include, at a minimum:

(i) the name and address of each officer of the research and development firm;

(ii) the name of the research and development firm as required for the purpose of incorporation in 35-1-216;

(iii) the address of its initial registered office required for the purpose of incorporation as required in 35-1-216;

(iv) the date the articles of incorporation were filed with the secretary of state as required in 35-1-215; and

(v) other information the department requires to effectively administer the provisions of this section.

(c) The application must be filed with the department before the end of the first calendar quarter during which the research and development firm engages in business in Montana.

(3) On receipt of the information required in subsection (2)(b), provided that it was filed in the time allowed under subsection (2)(c), the department shall designate the applicant as a research and development firm for the purposes of this section.

(4) Failure by an applicant to provide information required by the department under subsection (2)(b) or, except as provided in subsection (5), failure to file within the time allowed under subsection (2)(c) automatically disqualifies the applicant from being designated and treated as a research and development firm for the purposes of this section.

(5) The director of the department may grant an extension of time for an applicant to file an application for treatment as a research and development firm, provided the extension is given in writing and the extension does not extend beyond 30 days from the date the application was required to be filed under subsection (2)(c).

(6) For the purpose of calculating or otherwise determining the period for which a deduction, exclusion, exemption, or credit may be taken under the provisions of this chapter, the department shall disregard a research and development firm's first 5 taxable years of activity in Montana and administer the deduction, exclusion, exemption, or credit as if the corporation did not exist during those taxable years. This treatment of a research and development firm extends to net operating loss carryback and net operating loss carryforward provisions allowed under this chapter.

History: En. Sec. 1, Ch. 659, L. 1987; amd. Sec. 185, Ch. 368, L. 1991.

15-31-104 through 15-31-110 reserved.

15-31-111. Return to be filed. (1) Each corporation subject to the license tax imposed under this chapter shall for each tax period file a true and accurate return of its net income for the tax period in the manner and form prescribed by the department of revenue. The return must contain all of the facts, data, and information that are appropriate and in the opinion of the department necessary to determine the correctness of the net income returned and to carry out the provisions of this chapter. The return must be signed by the president, the vice president, the treasurer, the assistant treasurer, or the chief accounting officer.

(2) If the corporation is reporting on a calendar year basis, the return must be filed with the department on or before May 15 following the close of the calendar year. If the corporation is reporting on a fiscal year basis, the return must be filed with the department on or before the 15th day of the 5th month following the close of its fiscal year.

(3) (a) A corporation is allowed an automatic extension of time for filing its return of up to 6 months following the date prescribed for filing of its tax return. The tax and interest must be paid when the return is filed. Interest must be added to the tax due as provided in 15-31-510.

(b) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(4) Receivers, trustees in bankruptcy, or assignees operating the property or business of a corporation subject to the license tax imposed by this chapter shall make the return in the same manner and form as the corporation is required to make the return. Any license tax due on the basis of the return is assessed and collected in the same manner as if assessed directly against the corporation of whose business or property the receiver, trustee, or assignee has custody and control. The receiver, trustee, or assignee shall pay the tax out of the property of the corporation, prior to the claims of creditors or stockholders.

History: En. Sec. 4, Ch. 79, L. 1917; re-en. Sec. 2299, R.C.M. 1921; amd. Sec. 1, Ch. 146, L. 1923; re-en. Sec. 2299, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1947; amd. Sec. 1, Ch. 235, L. 1961; amd. Sec. 3, Ch. 186, L. 1963; amd. Sec. 1, Ch. 372, L. 1973; amd. Sec. 56, Ch. 516, L. 1973; amd. Sec. 1, Ch. 161, L. 1975; R.C.M. 1947, 84-1504(part); amd. Sec. 1, Ch. 54, L. 1995; amd. Sec. 2, Ch. 51, L. 1997.

Cross-References

Certified copies of return available, 15-31-551.

15-31-112. Taxable period. The license fee shall be computed on the basis of the corporation's total net income for the taxable period. The corporation's taxable period shall be its taxable year for federal income tax purposes. In the event a corporation changes its taxable year, it shall promptly notify the department of revenue.

History: En. Sec. 4, Ch. 79, L. 1917; re-en. Sec. 2299, R.C.M. 1921; amd. Sec. 1, Ch. 146, L. 1923; re-en. Sec. 2299, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1947; amd. Sec. 1, Ch. 235, L. 1961; amd. Sec. 3, Ch. 186, L. 1963; amd. Sec. 1, Ch. 372, L. 1973; amd. Sec. 56, Ch. 516, L. 1973; amd. Sec. 1, Ch. 161, L. 1975; R.C.M. 1947, 84-1504(1).

15-31-113. Gross income and net income. (1) The term "gross income" means all income recognized in determining the corporation's gross income for federal income tax purposes and:

(a) including:

(i) interest exempt from federal income tax and exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered;

(ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may be amended or renumbered, attributable to stockholders, either individual or corporate, not subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to the stockholders pursuant to federal law; and

(b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may be amended or renumbered, when the gain is required to be recognized by the liquidating corporation pursuant to subsection (1)(a)(ii) of this section.

(2) The term "net income" means the gross income of the corporation less the deductions set forth in 15-31-114.

(3) A corporation is not exempt from the corporation license tax unless specifically provided for under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for

federal income tax but not exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the taxable year.

History: En. Sec. 4, Ch. 79, L. 1917; re-en. Sec. 2299, R.C.M. 1921; amd. Sec. 1, Ch. 146, L. 1923; re-en. Sec. 2299, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1947; amd. Sec. 1, Ch. 235, L. 1961; amd. Sec. 3, Ch. 186, L. 1963; amd. Sec. 1, Ch. 372, L. 1973; amd. Sec. 56, Ch. 516, L. 1973; amd. Sec. 1, Ch. 161, L. 1975; R.C.M. 1947, 84-1504(part); amd. Sec. 2, Ch. 483, L. 1981; amd. Sec. 2, Ch. 278, L. 1995.

Cross-References

Payment received under Title 70, ch. 31, for relocation because of federally assisted program not income, 70-31-106.

Conservancy district bonds exemption, 85-9-626.

Board of Housing bonds exemption, 90-6-125.

15-31-114. Deductions allowed in computing income. (1) In computing the net income, the following deductions are allowed from the gross income received by the corporation within the year from all sources:

(a) all the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation contained in this section, and rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

(b) (i) all losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation must be the same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and a deduction may not be made for any amount of expense of restoring property or making good the exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

(ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of 15-31-119.

(c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements. The reasonable allowance must be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes must be the same as the elections made for federal income tax purposes.

(d) the amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from the property or business would be taxable under this part.

(e) (i) taxes paid within the year, except the following:

(A) taxes imposed by this part;

(B) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

(C) taxes on or according to or measured by net income or profits imposed by authority of the government of the United States;

(D) taxes imposed by any other state or country upon or measured by net income or profits.

(ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school district, or municipality of this state.

(f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(g) (i) except as provided in subsection (1)(g)(ii), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

(ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2)(b).

(3) In the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(h) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered, apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered.

History: En. Sec. 2, Ch. 79, L. 1917; amd. Sec. 1, Ch. 69, L. 1919; amd. Sec. 1, Ch. 258, L. 1921; re-en. Sec. 2297, R.C.M. 1921; amd. Sec. 2, Ch. 166, L. 1933; re-en. Sec. 2297, R.C.M. 1935; amd. Sec. 1, Ch. 133, L. 1947; amd. Sec. 1, Ch. 263, L. 1959; amd. Sec. 1, Ch. 235, L. 1971; amd. Sec. 1, Ch. 358, L. 1971; amd. Sec. 1, Ch. 320, L. 1973; amd. Sec. 54, Ch. 516, L. 1973; amd. Sec. 1, Ch. 54, L. 1974; amd. Sec. 3, Ch. 405, L. 1977; amd. Sec. 4, Ch. 576, L. 1977; R.C.M. 1947, 84-1502; amd. Sec. 3, Ch. 634, L. 1979; amd. Sec. 1, Ch. 574, L. 1981; amd. Sec. 21, Ch. 614, L. 1981; amd. Sec. 1, Ch. 447, L. 1983; amd. Sec. 11, Ch. 516, L. 1985; amd. Sec. 12, Ch. 611, L. 1987; amd. Sec. 1, Ch. 538, L. 1989; amd. Sec. 4, Ch. 617, L. 1989; amd. Sec. 3, Ch. 278, L. 1995; amd. Sec. 103, Ch. 574, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 574 inserted (1)(h) concerning per capita livestock fees; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Individual income tax — net operating loss — computation, 15-30-117

Deduction for energy-conserving investments, 15-32-103.

Tax credits for investment in Montana capital company, 90-8-202, 90-8-203.

15-31-115. Reaffirmation of bond income inclusion in definition of net income for corporation license tax purposes. Notwithstanding the provisions of any other law, the income from bonds or other obligations issued by any state or political subdivision of a state are included in gross and net income for purposes of the corporation license tax. Further, such income has been included in gross and net income since the effective date of Chapter 634, Laws of 1979, which law repealed the exclusion of such income from the tax base of the corporation license tax.

History: En. Sec. 3, Ch. 673, L. 1983.

15-31-116. Repealed. Sec. 1, Ch. 125, L. 1989.

History: En. Sec. 1, Ch. 673, L. 1983.

15-31-117. Tax deductibility. (1) The amount of contributions made by a small business to its independent liability fund as defined in 33-27-103 is deductible to that small business on its Montana corporate license tax or corporate income tax return for the taxable year in which the contributions are made to the fund.

(2) Administrative costs under 33-27-117(1), except those paid from the principal of an independent liability fund, are deductible on the Montana corporate license tax or corporate income tax return for the taxable year in which they are paid or accrued.

(3) Income on the money, assets, and investments in an independent liability fund as defined in 33-27-103 may be contributed to the fund. If it is not so contributed, it is taxable in accordance with the applicable provisions of this chapter.

History: En. Secs. 10, 11, 15, Ch. 564, L. 1987.

15-31-118. Taxable liability on termination of independent liability fund. If an independent liability fund established pursuant to Title 33, chapter 27, is terminated as provided in 33-27-119, the income from the principal distributed pursuant to 33-27-119(3) is taxable to that person or persons under the applicable provisions of this chapter.

History: En. Sec. 18, Ch. 564, L. 1987; amd. Sec. 2, Ch. 111, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 111 substituted "33-27-119(3)" for "33-27-119(2)". Amendment effective October 1, 2001.

15-31-119. Net operating losses — carryovers and carrybacks. (1) The net operating loss deduction is the aggregate of net operating loss carryovers to the taxable period plus the net operating loss carrybacks to the taxable period.

(2) The term "net operating loss" means the excess of the deductions allowed by this section over the gross income, with the modifications specified in subsection (6).

(3) If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, the loss must be a net operating loss carryback to each of the three taxable periods preceding the taxable period of the loss and must be a net operating loss carryover to each of the five taxable periods following the taxable period of the loss.

(4) A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the three preceding taxable periods, must be a net operating loss carryover to each of the seven taxable periods following the taxable period of the loss.

(5) Except as provided in subsection (11), the portion of the loss that must be carried to each of the other taxable years must be the excess, if any, of the amount of the loss over the sum of the net income for each of the prior taxable periods to which the loss was carried. For purposes of this subsection, the net income for the prior taxable period must be computed with the modification specified in subsection (6)(b) and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period after the loss period, and the net income so computed may not be considered to be less than zero.

(6) The modifications referred to in subsection (2) are as follows:

(a) The net operating loss deduction may not be allowed.

(b) The deduction for depletion may not exceed the amount that would be allowable if computed under the cost method.

(c) Any net operating loss carried over to any taxable year must be calculated under the provisions of this section effective for the taxable year for which the return claiming the net operating loss carryover is filed.

(7) A net operating loss deduction may be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(8) In the case of a merger of corporations, the surviving corporation may not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity may not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(9) Notwithstanding the provisions of 15-31-531, interest may not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(10) The net operating loss deduction must be allowed with respect to taxable periods.

(11) A taxpayer entitled to a carryback period for a net operating loss may elect to forego the entire carryback period. If the election is made, the loss may be carried forward only. The election must be made on or before the date on which the return is due, including any extension of the due date, for the tax year of the net operating loss for which the election is to be in effect. The election is irrevocable for the year made.

(12) Notwithstanding any other provision of this section, the net operating loss deduction is not allowed in the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(b) of the Internal Revenue Code of 1986, as that section may be amended or renumbered.

History: En. Sec. 3, Ch. 538, L. 1989; amd. Sec. 4, Ch. 278, L. 1995.

15-31-120 reserved.

15-31-121. Rate of tax — minimum tax. (1) Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 is 6 $\frac{3}{4}$% of all net income for the taxable period.

(2) For a taxpayer making a water's-edge election, the percentage of net income to be paid under 15-31-101 is 7% of all taxable net income for the taxable period.

(3) Each corporation subject to taxation under this part shall pay a minimum tax of not less than $50.

History: En. Sec. 1, Ch. 79, L. 1917; Subd. 16, amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R.C.M. 1921; amd. Sec. 1, Ch. 166, L. 1933; re-en. Sec. 2296, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965; amd. Sec. 1, Ch. 4, Ex. L. 1967; amd. Sec. 1, Ch. 11, Ex. L. 1969; amd. Sec. 1, Ch. 16, L. 1971; amd. Sec. 1, Ch. 333, L. 1971; amd. Sec. 1, Ch. 5, Ex. L. 1971; amd. Sec. 1, Ch. 7, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 468, L. 1973; amd. Sec. 1, Ch. 484, L. 1973; amd. Sec. 1, Ch. 5, L. 1974; amd. Sec. 1, Ch. 257, L. 1977; R.C.M. 1947, 84-1501(part); amd. Sec. 7, Ch. 616, L. 1987; amd. Sec. 90, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 15, Sp. L. July 1992; amd. Sec. 14, Ch. 634, L. 1993 (voided by I.R. No. 112, Nov. 8, 1994); amd. Sec. 31, Ch. 51, L. 1999.

Cross-References

Credit for alternative fuel motor vehicle conversion, 15-30-164.
Investment credit, 15-31-123.
New or expanded industry credit, 15-31-124.
Tax credit for loans by certain public utilities and financial institutions for energy-saving purposes, 15-32-107.
Credit for public contractor's license fee, 15-50-207.
Tax credits for investment in Montana capital company, 90-8-202, 90-8-203.

15-31-122. Alternative gross sales tax. Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, every corporation deriving income from sources both within and without the state of Montana and required to file a return and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay a tax of 1/2 of 1% of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under 15-31-101 and 15-31-121. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact.

History: En. Sec. 1, Ch. 79, L. 1917; Subd. 16, amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R.C.M. 1921; amd. Sec. 1, Ch. 166, L. 1933; re-en. Sec. 2296, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965; amd. Sec. 1, Ch. 4, Ex. L. 1967; amd. Sec. 1, Ch. 11, Ex. L. 1969; amd. Sec. 1, Ch. 16, L. 1971; amd. Sec. 1, Ch. 333, L. 1971; amd. Sec. 1, Ch. 5, Ex. L. 1971; amd. Sec. 1, Ch. 7, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 468, L. 1973; amd. Sec. 1, Ch. 484, L. 1973; amd. Sec. 1, Ch. 5, L. 1974; amd. Sec. 1, Ch. 257, L. 1977; R.C.M. 1947, 84-1501(part).

Cross-References

Multistate Tax Compact, Title 15, ch. 1, part 6.

15-31-123. Investment credit. (1) The purpose of this section is to allow small businesses to take an investment credit as provided for in subsection (3) and to stimulate capital investment by the small business sector.

(2) For the purposes of this section, "small business" means a business that does not have:

(a) more than 10 shareholders;

(b) a person who is not an individual (other than an estate or other than a trust described in subsection (8)) as a shareholder;

(c) a nonresident alien as a shareholder; and

(d) more than one class of stock.

(3) There is allowed as a credit against the taxes imposed by 15-31-101, 15-31-121, and 15-31-122 a percentage of the credit allowed with respect to certain depreciable property under section 38 of the Internal Revenue Code of 1954, as amended, or as section 38 may be renumbered or amended. However, rehabilitation costs as set forth under section 46(a)(2)(F) of the Internal Revenue Code of 1954, or as section 46(a)(2)(F) may be renumbered or amended, are not to be included in the computation of the investment credit. The credit is allowed for the purchase and installation of certain qualified property defined by section 38 of the Internal Revenue Code of 1954, as amended, if the property meets all of the following qualifications:

(a) it was placed in service in Montana; and

(b) it was used for the production of Montana income.

(4) The amount of the credit allowed for the taxable year is 5% of the amount of credit determined under section 46(a)(2) of the Internal Revenue Code of 1954, as amended, or as section 46(a)(2) may be renumbered or amended.

(5) Notwithstanding the provisions of subsection (4), the investment credit allowed for the taxable year may not exceed $500.

(6) If property for which an investment credit is claimed is used both inside and outside this state, only a portion of the credit is allowed. The credit must be apportioned according to a fraction the numerator of which is the number of days during the taxable year the property was located in Montana and the denominator of which is the number of days during the taxable year the taxpayer owned the property. The investment credit may be applied only to the tax liability of the taxpayer who purchases and places in service the property for which an investment credit is claimed.

(7) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code of 1954, as amended, or as section 47 may be renumbered or amended.

(8) (a) For purposes of subsection (2)(b), any of the following trusts may be a shareholder without disqualifying the business for the investment credit:

(i) a trust all of which is treated as owned by the grantor under sections 671 through 678 of the Internal Revenue Code;

(ii) a trust created primarily to exercise the voting power of stock transferred to it;

(iii) any trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 60-day period beginning on the day on which such stock is transferred to it.

(b) In the case of a trust described in subsection (8)(a)(ii), each beneficiary of the trust shall be treated as a shareholder.

History: En. 84-4960, 84-4961 by Secs. 1, 2, Ch. 412, L. 1977; R.C.M. 1947, 84-4960, 84-4961(part); amd. Sec. 3, Ch. 111, L. 1979; amd. Sec. 3, Ch. 520, L. 1981; amd. Sec. 2, Ch. 704, L. 1983; amd. Sec. 9, Ch. 20, L. 1985.

Cross-References

Individual investment credit, 15-30-162.

15-31-124. New or expanded industry credit — definitions. As used in 15-31-124 through 15-31-127, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Expanding" means to expand or diversify a present operation to increase total full-time jobs by 30% or more.

(3) "Manufacturing" means:

(a) the process of mechanical or chemical transformation of materials or substances into new products, as described in the North American Industry Classification System Manual prepared by the United States office of management and budget; or

(b) the production of energy by means of an alternative renewable energy source as defined in 90-4-102.

(4) (a) "New corporation" means a corporation engaging in manufacturing for the first time in this state. A new corporation includes:

(i) a manufacturing corporation existing outside of Montana that enters into manufacturing in the state;

(ii) a nonmanufacturing corporation within the state that enters into manufacturing in the state; or

(iii) a corporation newly formed in Montana and entering into manufacturing operations in the state.

(b) A new corporation does not include:

(i) a corporation reorganized from a previously existing corporation that has been engaged in manufacturing in this state; or

(ii) a corporation created as a parent, subsidiary, or affiliate of an existing corporation that has been engaged in manufacturing in this state of which 20% or more of the ownership is held by the corporation or by the stockholders of the corporation.

History: En. 84-1520 by Sec. 2, Ch. 435, L. 1975; R.C.M. 1947, 84-1520; amd. Sec. 4, Ch. 694, L. 1991; amd. Sec. 32, Ch. 51, L. 1999; amd. Sec. 8, Ch. 591, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 591 in definition of manufacturing inserted (b) concerning electrical energy production from an alternative renewable energy source; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 30, Ch. 591, L. 2001, provided: "[Sections 6 through 12 and 14] [15-6-225, 15-24-1401, 15-31-124, 15-32-102, 15-32-109, 15-32-115, 15-32-201, and 15-32-402] apply to tax years beginning after December 31, 2001."

15-31-125. Determination of tax credit. A new or expanding manufacturing corporation may receive a license tax credit based on a percentage of wages paid its new employees within this state for a period of 3 years as follows: the first 3 years of operation of a new corporation or the first 3 years of expansion of an expanding corporation, a credit of 1% of the total new wages paid in this state, as wages are defined in 39-51-201 may be allowed. In determining total wages for an expanding corporation, only those wages paid in support of the expansion are considered in ascertaining the credit. The payroll and number of jobs of the corporation in the 12-month period immediately preceding the expansion are averaged to determine eligibility for the credit.

History: En. 84-1523 by Sec. 3, Ch. 435, L. 1975; R.C.M. 1947, 84-1523.

15-31-126. Limitation. This credit is available only to those new and expanding corporations that provide jobs within the state of Montana.

History: En. 84-1525 by Sec. 5, Ch. 435, L. 1975; R.C.M. 1947, 84-1525.

15-31-127. Department duties. The department shall determine the eligibility of a corporation for this credit, promulgate rules, prepare forms, maintain records, and perform other duties necessary to carry out 15-31-124 through 15-31-127.

History: En. 84-1524 by Sec. 4, Ch. 435, L. 1975; R.C.M. 1947, 84-1524.

15-31-128 through 15-31-130 reserved.

15-31-131. Credit for dependent care assistance and referral services. (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the tax year by the employer for dependent care assistance actually provided to or on behalf of an employee if the assistance is furnished by a registered or licensed day-care provider and pursuant to a program that meets the requirements of section 129(d)(2) through (6) of the Internal Revenue Code, 26 U.S.C. 129(d)(2) through (d)(6).

(2) (a) The amount of the credit allowed under subsection (1) is 25% of the amount paid or incurred by the employer during the tax year, but the credit may not exceed $1,575 of day-care assistance actually provided to or on behalf of the employee.

(b) For the purposes of this subsection, marital status must be determined under the rules of section 21(e)(3) and (4) of the Internal Revenue Code, 26 U.S.C. 21(e)(3) and (e)(4).

(c) In the case of an onsite facility, the amount upon which the credit allowed under subsection (1) is based, with respect to any dependent, must be based upon utilization and the value of the services provided.

(3) (a) In addition to the credit allowed under subsection (1), there is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the tax year by the employer to provide information and referral services to assist employees of the employer employed within this state to obtain dependent care.

(b) The amount of the credit allowed under subsection (3)(a) is equal to 25% of the amount paid or incurred in the tax year.

(4) An amount paid or incurred during the tax year of an employer in providing dependent care assistance to or on behalf of any employee does not qualify for the credit allowed under subsection (1) if the amount was paid or incurred to an individual described in section 129(c)(1) or (2) of the Internal Revenue Code, 26 U.S.C. 129(c)(1) or (c)(2).

(5) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of an employee does not qualify for the credit allowed under subsection (1):

(a) to the extent the amount is paid or incurred pursuant to a salary reduction plan; or

(b) if the amount is paid or incurred for services not performed within this state.

(6) If the credit allowed under subsection (1) or (3) is claimed, the amount of any deduction allowed or allowable under this chapter for the amount that qualifies for the credit (or upon which the credit is based) must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section must be made at the time of filing the tax return.

(7) The amount upon which the credit allowed under subsection (1) is based may not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section may not exceed the limitations provided in section 129(b) of the Internal Revenue Code, 26 U.S.C. 129(b). For purposes of Title 15, chapter 30, part 2, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection. Amounts excluded under this subsection do not qualify as expenses for which a deduction is allowed to the employee under 15-30-121.

(8) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year and likewise through the fifth year succeeding the tax year in which the credit was first allowed or allowable. A credit may not be carried forward beyond the fifth succeeding tax year.

(9) If the taxpayer is an S. corporation, as defined in section 1361 of the Internal Revenue Code, 26 U.S.C. 1361, and the taxpayer elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. A shareholder's credit must be computed using the shareholder's pro rata share of the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the corporation as otherwise provided by law.

(10) For purposes of the credit allowed under subsection (1) or (3):

(a) the definitions and special rules contained in section 129(e) of the Internal Revenue Code, 26 U.S.C. 129(e), apply to the extent applicable; and

(b) "employer" means an employer carrying on a business, trade, occupation, or profession in this state.

History: En. Sec. 1, Ch. 706, L. 1989; amd. Sec. 1, Ch. 416, L. 1991; amd. Sec. 17, Ch. 634, L. 1993 (voided by I.R. No. 112, Nov. 8, 1994); amd. Sec. 73, Ch. 42, L. 1997; amd. Sec. 4, Ch. 540, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 540 in (2)(a) increased the percentage amount of allowable credit against taxes for dependent care assistance from 20% to 25% and increased dollar amount of credit allowed for day-care assistance from $1,250 to $1,575; inserted (3) allowing a tax credit to an employer for amounts paid or incurred during the tax year by the employer to provide information and referral services to assist certain employees to obtain dependent care; in (10) at end of introductory clause after "subsection (1)" inserted "or (3)"; and made minor changes in style. Amendment effective May 1, 2001.

Retroactive Applicability: Section 7, Ch. 540, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000, and to day-care facilities acquired by an employer and placed in operation after December 31, 2000."

Cross-References

Credit for dependent care assistance — individual income tax, 15-30-186.

15-31-132. Tax credit for providing disability insurance for employees. An employer is entitled to a credit against taxes otherwise due under this chapter for the amount of premiums for disability insurance paid by the employer for the employer's employees, subject to the following requirements:

(1) The tax credit is available only to employers who:

(a) have been in business in Montana for at least 12 months; and

(b) employ 20 or fewer employees working at least 20 hours a week.

(2) At least 50% of each employee's insurance premium is paid by the employer.

(3) Subject to the provisions of subsection (4), an employer is entitled to a tax credit for a maximum of 10 employees, computed as follows:

(a) a credit of $25 a month for each employee if the employer pays 100% of the employee's premium; or

(b) a credit equal to $25 a month multiplied by the percentage of the employee's premium paid by the employer for each employee if the employer pays less than 100% of the employee's premium.

(4) The credit may not exceed 50% of the premium cost for each employee and may not be claimed for a period of more than 36 consecutive months. A tax credit may not be granted to an employer or the employer's successor within 10 years of the last consecutive credit claimed.

(5) The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the employer has no tax liability.

History: En. Sec. 6, Ch. 606, L. 1991; amd. Sec. 20, Ch. 7, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 7 in introductory clause after "disability insurance" deleted "[issued under Title 33, chapter 22, part 12, and]"; and made minor changes in style. Amendment effective October 1, 2001.

15-31-133. Credit for day-care facilities. (1) There is a credit against the taxes otherwise due under this chapter that is allowable to an employer based on the amounts paid or incurred during the tax year by the employer to acquire, construct, reconstruct, renovate, or otherwise improve real property so that the property may be used primarily as a day-care facility. Subject to the conditions of this section, the amount of the credit is equal to:

(a) the amount of the day-care facility credit determined under subsection (2); and

(b) any day-care facility tax credit carryforwards.

(2) The credit allowed under subsection (1) is the lesser of:

(a) $2,500, multiplied by the number of dependents that the day-care facility is designed to accommodate at the end of the first tax year for which credit is first claimed;

(b) 15% of the cost of the acquisition, construction, reconstruction, renovation, or other improvement; or

(c) $50,000.

(3) The amounts paid or incurred by the employer for the acquisition, construction, reconstruction, renovation, or other improvement to real property that qualify for the credit may be paid or incurred either:

(a) to another person to be used to acquire, construct, reconstruct, renovate, or otherwise improve real property that is operated as a day-care facility and with whom the employer contracts to make day-care assistance payments, and the payments are excluded, or partially excluded, under 26 U.S.C. 129 from the income of the employee for federal tax purposes; or

(b) to acquire, construct, reconstruct, renovate, or otherwise improve real property that is operated by the employer, or a combination of employers, to provide day-care assistance to the employees of the employer under a program or programs, and the program or programs are excluded, or partially excluded, under 26 U.S.C. 129 from the income of the employee for federal tax purposes.

(4) To qualify for the credit allowed under subsection (1), the following conditions apply:

(a) The property must be in actual use in Montana as a day-care facility on the last day of the tax year for which the credit or any carryforward amount of the credit is claimed.

(b) Day-care services assisted by the employer must take place on the property on the last day of the tax year for which the credit or any carryforward amount of the credit is claimed.

(c) The person operating the day-care facility must hold a current license or registration certificate under Title 52, chapter 2, part 7, on the last day of the tax year for which the credit under subsection (1) is claimed.

(d) The day-care facility must accommodate six or more children.

(e) The day-care facility must be placed in operation before January 1, 2006.

(5) The total amount of the costs upon which the credit allowed under subsection (1) is based and the total amount of the credit must be determined by the employer, subject to rules adopted by the department, during the tax year in which the property acquired, constructed, reconstructed, renovated, or otherwise improved is first placed in operation as a day-care facility.

(6) The amount paid or incurred by the employer upon which the credit allowed under subsection (1) is based must be excluded from the income of an employee subject to the limitations provided in 26 U.S.C. 129(b).

(7) The taxpayer is allowed one-tenth of the total credit determined under subsection (2) in the first tax year in which the taxpayer may claim the credit and one-tenth of the total credit is allowed in each succeeding tax year, not to exceed 9 tax years.

(8) Except as provided in subsections (4)(a) and (4)(b), if the tax credit allowed under subsection (1) exceeds the taxpayer's liability, the credit may be carried forward to the succeeding tax year or years, except that a carryforward amount is not allowed beyond the period allowed for the credit as provided in subsection (7).

(9) The provisions of this section do not affect the computation of depreciation or basis for a day-care facility. However, if the credit allowed under this section is claimed, the amount of any deduction that is allowed or allowable under this chapter for the amounts paid or incurred, or upon which the credit is based, must be reduced by the dollar amount of the credit allowed.

(10) The department shall require evidence from the taxpayer that the person operating the day-care facility on the date that the taxpayer's tax year ends is licensed or registered to operate the facility. The evidence must accompany the tax return in which any amount of tax credit allowed under this section is claimed. If the evidence is not furnished, the credit is not allowed for the tax year for which the evidence is not furnished. Upon request of the department, the department of public health and human services shall report to the department on whether the day-care facility was operated as a licensed or registered day-care facility on the last day of the tax year of the person claiming the credit.

(11) The employer must meet any other requirements or furnish any information to the department that the department requires under rules adopted by the department to carry out the purposes of this section.

(12) If the credit allowed under this section is claimed by a small business corporation, as defined in 15-30-1101, or a partnership, the credit must be attributed to shareholders or partners, using the same proportion to report the corporation's or partnership's income or loss for Montana income tax purposes.

(13) For purposes of the credit allowed under subsection (1):

(a) the definitions and special rules contained in 26 U.S.C. 129(e) apply to the extent applicable; and

(b) "employer" means an employer carrying on a business, trade, occupation, or profession in this state.

History: En. Sec. 1, Ch. 540, L. 2001.

Compiler's Comments

Effective Date: Section 6, Ch. 540, L. 2001, provided: "[This act] is effective on passage and approval." Approved May 1, 2001.

Retroactive Applicability: Section 7, Ch. 540, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000, and to day-care facilities acquired by an employer and placed in operation after December 31, 2000."

15-31-134 reserved.

15-31-135. Contribution by small business corporation. A contribution to a general endowment fund of the Montana university system or a Montana private college by a small business corporation, as defined in 15-30-1101, qualifies for the credit in 15-30-163. The credit must be attributed to shareholders, using the same proportion used to report the corporation's income or loss for Montana income tax purposes.

History: En. Sec. 2, Ch. 542, L. 1991.

15-31-136. Contribution by partnership. A contribution to a general endowment fund of the Montana university system or a Montana private college by a partnership qualifies for the credit in 15-30-163. The credit must be attributed to partners, using the same proportion used to report the partnership's income or loss for Montana tax purposes.

History: En. Sec. 3, Ch. 542, L. 1991.

15-31-137. Small business corporation and partnership credit for alternative fuel conversion. If equipment and labor costs incurred to convert a motor vehicle to operate on alternative fuel are claimed as a credit under 15-30-164 by a small business corporation, as defined in 15-30-1101, or a partnership, the credit must be attributed to shareholders or partners using the same proportion used to report the corporation's or partnership's income or loss for Montana income tax purposes.

History: En. Sec. 2, Ch. 617, L. 1993.

15-31-138 through 15-31-140 reserved.

15-31-141. Consolidated returns — computation and procedure. (1) Corporations that are affiliated may not file a consolidated return unless at least 80% of all classes of stock of each corporation involved is owned directly or indirectly by one or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and, except for a unitary business operation described in subsection (2)(b), permission to file a consolidated return is given by the department. For purposes of this section, a "unitary business operation" means one in which:

(a) the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations; or

(b) all of the corporations in the affiliated group operate exclusively in Montana, are not multistate corporations, and have filed a consolidated federal return for the tax year.

(3) The election to file a consolidated return is binding as long as the affiliated group continues to file a federal consolidated return.

(4) If the conditions of subsections (1) and (2) are met, the department may require corporations to file a consolidated return when the department considers a consolidated return necessary.

(5) Any corporation liable to report under this chapter and owning or controlling, either directly or indirectly, at least 80% of all classes of stock of each corporation involved may be required to make a consolidated report showing the combined net income, the assets of the corporation that are required for the purposes of this chapter, and any other information that the department may require, but excluding intercorporate stockholdings and intercorporate accounts. Any corporation liable to report under this chapter and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, the assets of the corporation that are required for the purposes of this chapter, and any other information that the department may require, but excluding intercorporate stockholdings and intercorporate accounts. If it appears to the department that any arrangement exists in a manner that improperly reflects the business done, the segregable assets, or the entire net income earned from business done in this state, the department may equitably adjust the tax in a manner that it may determine.

(6) (a) When an affiliated group elects to file a consolidated return under the provisions of this section, a corporation of the affiliated group shall file a separate return for any portion of its taxable year in which its income is not included in the consolidated return of the group. The

separate return must be filed no later than the 15th day of the 5th month following the close of the taxable year for which a consolidated return of the affiliated group is filed.

(b) A 1-month to 6-month extension of time is automatically allowed for filing a return if on or before the due date of the return, an application for an extension is made by the corporation. The application must be made on forms prescribed by the department.

History: En. Sec. 5, Ch. 166, L. 1933; re-en. Sec. 2303.1, R.C.M. 1935; amd. Sec. 1, Ch. 243, L. 1969; amd. Sec. 62, Ch. 516, L. 1973; R.C.M. 1947, 84-1509; (5)En. Sec. 2, Ch. 673, L. 1983; amd. Sec. 1, Ch. 451, L. 1987; amd. Sec. 1, Ch. 86, L. 1991; amd. Sec. 1, Ch. 369, L. 1997.

15-31-142. Reports upon merger of corporations. If any corporation shall acquire, either directly, indirectly, or by merger or consolidation, the major portion of the actively employed assets of another corporation or of corporations doing any business in this state during any year or shall merge or consolidate another corporation, it shall within 30 days after such acquisition, merger, or consolidation file a report and include therein a statement showing its own and the consolidated entire net income of all such corporations for preceding calendar or fiscal years to the extent that all such income has not been used or included in measuring a corporation excise tax to this state. It shall, in any event, be liable for and pay all taxes that would have been due and payable by the corporation or corporations on or before the first day of January next succeeding had the corporation or corporations whose assets were acquired or which were merged or consolidated continued in business and as though there had been no interruption or change of the business thereof or discontinuance of the privilege of doing business. It shall also include in its own next annual return, in addition to its own entire net income, so much of the entire net income of corporations whose assets it acquired or which were merged or consolidated as shall not have been used or included in measuring a corporation excise tax to this state and shall be taxed upon such combined entire net income for the year to ensue.

History: En. Sec. 6, Ch. 166, L. 1933; re-en. Sec. 2303.2, R.C.M. 1935; R.C.M. 1947, 84-1510.

15-31-143. Return and payment on corporate dissolution. (1) Each corporation doing business in Montana shall pay an excise tax for the exercise of that privilege, and the amount of the excise tax must be based upon the total taxable net income of a corporation during the entire period of time that it is engaged in business in this state. No remission of that obligation for the last year in which a corporation engages in business in Montana was intended by the original enactment of this section.

(2) Each corporation that is dissolved or ceases to do business in Montana shall, upon the dissolution or cessation of business, make a return and pay the corporation license tax determined on the basis of its net income for the final period in which it did business in this state at the rate provided in 15-31-121 and 15-31-122, in addition to all other corporation license taxes for which the corporation may then be liable.

History: En. Sec. 7, Ch. 166, L. 1933; re-en. Sec. 2303.3, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1943; amd. Sec. 1, Ch. 60, L. 1963; R.C.M. 1947, 84-1511; amd. Sec. 1, Ch. 69, L. 1999.

15-31-144 through 15-31-149 reserved.

15-31-150. Credit for research expenses and research payments. (1) (a) There is a credit against taxes otherwise due under this chapter for increases in qualified research expense and basic research payments for research conducted in Montana. Except as provided in this section, the credit must be determined in accordance with section 41 of the Internal Revenue Code, 26 U.S.C. 41, as that section read on July 1, 1996, or as subsequently amended.

(b) For purposes of the credit, the:

(i) applicable percentage specified in 26 U.S.C. 41(a) is 5%;

(ii) election of the alternative incremental credit allowed under 26 U.S.C. 41(c)(4) does not apply;

(iii) special rules in 26 U.S.C. 41(g) do not apply; and

(iv) termination date provided for in 26 U.S.C. 41(h) does not apply.

(2) The credit allowed under this section for a tax year may not exceed the tax liability under chapter 30 or 31. A credit may not be refunded if a taxpayer has tax liability less than the amount of the credit.

(3) The credit allowed under this section may be used as a carryback against taxes imposed under chapter 30 or 31 for the 2 preceding tax years and may be used as a carryforward against taxes imposed by chapter 30 or 31 for the 15 succeeding tax years. The entire amount of the credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(4) A taxpayer may not claim a current year credit under this section after December 31, 2010. However, any unused credit may be carried back or forward as provided in subsection (3).

(5) A corporation, an individual, a small business corporation, a partnership, a limited liability partnership, or a limited liability company qualifies for the credit under this section. If the credit is claimed by a small business corporation, a partnership, a limited liability partnership, or a limited liability company, the credit must be attributed to the individual shareholders, partners, members, or managers in the same proportion used to report income or loss for state tax purposes. The allocations in 26 U.S.C. 41(f) do not apply to this section.

(6) For purposes of calculating the credit, the following definitions apply:

(a) "Gross receipts" means:

(i) for a corporation that has income from business activity that is taxable only within the state, all gross sales less returns of the corporation for the tax year; and

(ii) for a corporation that has income from business activity that is taxable both within and outside of the state, only the gross sales less returns of the corporation apportioned to Montana for the tax year.

(b) "Qualified research" has the meaning provided in 26 U.S.C. 41(d), but is limited to research conducted in Montana.

(c) "Qualified research expenses" has the meaning provided in 26 U.S.C. 41(b), but includes only the sum of amounts paid or incurred by the taxpayer for research conducted in Montana.

(d) "Supplies" has the meaning provided in 26 U.S.C. 42(b)(2)(C), but includes only those supplies used in the conduct of qualified research in Montana.

(e) "Wages" has the meaning provided in 39-51-201 and includes only those wages paid or incurred for an employee for qualified services performed by the employee in Montana. For a self-employed individual and an owner-employee, the term includes the income, as defined in 26 U.S.C. 401(c)(2), of the employee.

(7) The department shall adopt rules, prepare forms, maintain records, and perform other duties necessary to implement this section. In adopting rules to implement this section, the department shall conform the rules to regulations prescribed by the secretary of the treasury under 26 U.S.C. 41 except to the extent that the regulations need to be modified to conform to this section.

History: En. Sec. 1, Ch. 444, L. 1999.

15-31-151. Credit for preservation of historic buildings. (1) (a) There is allowed as a credit against the taxes imposed by 15-31-101, 15-31-121, and 15-31-122 a percentage of the credit allowed for qualified rehabilitation expenditures, with respect to any certified historic building located in Montana, as provided in 26 U.S.C. 47 or as that section may be renumbered or amended.

(b) The amount of the credit allowed for a tax year is 25% of the amount of the credit determined under 26 U.S.C. 47(a)(2) or as that section may be renumbered or amended.

(2) The credit allowed by this section may not be refunded if the taxpayer has a tax liability less than the amount of the credit. If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by this section for the tax year exceeds the taxpayer's tax liability for the current tax year, the excess attributable to the current tax year's credit is a credit carryover to the 7 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first.

(3) If the credit under this section is claimed by a small business corporation, as defined in 15-30-1101, or a partnership, the credit must be attributed to shareholders or partners, using the same proportion used to report the corporation's or partnership's income or loss for Montana income tax purposes.

History: En. Sec. 1, Ch. 545, L. 1997.

15-31-152 through 15-31-160 reserved.

15-31-161. *(Temporary)* **Credit for contribution by corporations to qualified endowment.** A corporation is allowed a credit in an amount equal to 20% of a charitable gift against the taxes otherwise due under 15-31-101 for charitable contributions made to a qualified endowment, as defined in 15-30-165. The maximum credit that may be claimed by a corporation for contributions made from all sources in a year under this section is $10,000. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability. The credit allowed under this section may not be claimed by a corporation if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-31-114. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. *(Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)*

History: En. Sec. 3, Ch. 537, L. 1997; amd. Sec. 3, Ch. 226, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 226 near middle of first sentence after "equal to" substituted "20% of a charitable gift" for "50% of a charitable gift". Amendment effective October 1, 2001.

Extension of Termination Date: Section 5, Ch. 226, L. 2001, amended sec. 9, Ch. 537, L. 1997, by extending the termination date imposed by Ch. 537 to December 31, 2007.

Applicability: Section 8, Ch. 226, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001, and to contributions to qualified endowments made after December 31, 2001."

15-31-162. *(Temporary)* **Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment.** A contribution to a qualified endowment, as defined in 15-30-165, by a small business corporation, as defined in 15-30-1101, a partnership, or a limited liability company, as defined in 35-8-102, carrying on any trade or business for which deductions would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162, or carrying on any rental activity qualifies for the credit provided in 15-31-161. The credit must be attributed to shareholders, partners, or members or managers of a limited liability company in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for Montana income tax purposes. The maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member or manager of a limited liability company may claim in a year is $10,000, subject to the limitations in 15-30-166(2). The credit allowed under this section may not exceed the taxpayer's income tax liability. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. *(Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)*

History: En. Sec. 4, Ch. 537, L. 1997; amd. Sec. 4, Ch. 226, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 226 near end of first sentence after "as defined in 35-8-102" inserted "carrying on any trade or business for which deductions would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162, or carrying on any rental activity". Amendment effective October 1, 2001.

The amendments to this section made by Ch. 143, L. 2001, were rendered void by sec. 6, Ch. 226, L. 2001, a coordination section.

Extension of Termination Date: Section 5, Ch. 226, L. 2001, amended sec. 9, Ch. 537, L. 1997, by extending the termination date imposed by Ch. 537 to December 31, 2007.

Applicability: Section 8, Ch. 226, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001, and to contributions to qualified endowments made after December 31, 2001."

15-31-163 through 15-31-169 reserved.

15-31-170. *(Temporary)* **Credit for contributions to affordable housing revolving loan account.** (1) A contribution to the affordable housing revolving loan account as provided in 15-30-181 by a small business corporation, as defined in 15-30-1101, a partnership, or a limited liability company, as defined in 35-8-102, carrying on any trade or business for which a deduction would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162, or carrying on any rental activity qualifies for the credit provided in 15-30-181.

(2) If contributions to the affordable housing revolving loan account are claimed as a credit under 15-30-181 by a small business corporation, as defined in 15-30-1101, or a partnership, the credit must be attributed to shareholders or partners, using the same proportion used to report

the corporation's or partnership's income or loss for Montana income tax purposes. *(Terminates December 31, 2004—sec. 7, Ch. 411, L. 2001.)*

History: En. Sec. 2, Ch. 411, L. 2001.

Compiler's Comments

Effective Date: Section 5, Ch. 411, L. 2001, provided: "[This act] is effective on passage and approval." Approved April 28, 2001.

Retroactive Applicability: Section 6, Ch. 411, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

Termination: Section 7, Ch. 411, L. 2001, provided: "[This act] terminates December 31, 2004."

Part 2
Small Business Corporations (Renumbered and Repealed)

15-31-201. Renumbered 15-30-1101. Sec. 16(2), Ch. 143, L. 2001.

15-31-202. Repealed. Sec. 17, Ch. 143, L. 2001.

History: En. Sec. 2, Ch. 122, L. 1959; amd. Sec. 53, Ch. 516, L. 1973; amd. Sec. 1, Ch. 34, L. 1977; amd. Sec. 2, Ch. 405, L. 1977; R.C.M. 1947, 84-1501.2; amd. Sec. 22, Ch. 581, L. 1979; amd. Sec. 2, Ch. 667, L. 1983; amd. Sec. 7, Ch. 807, L. 1991; amd. Sec. 15, Ch. 634, L. 1993 (voided by I.R. No. 112, Nov. 8, 1994); amd. Sec. 1, Ch. 65, L. 1997.

15-31-203. Renumbered 15-30-1121. Sec. 16(2), Ch. 143, L. 2001.

15-31-204. Repealed. Sec. 3, Ch. 65, L. 1997.

History: En. Sec. 2, Ch. 11, Ex. L. 1969; R.C.M. 1947, 84-1501.5; amd. Sec. 8, Ch. 807, L. 1991; amd. Sec. 16, Ch. 634, L. 1993 (voided by I.R. No. 112, Nov. 8, 1994).

15-31-205. Repealed. Sec. 5, Ch. 667, L. 1983.

History: En. 84-1501.1 by Sec. 1, Ch. 122, L. 1959; amd. Sec. 1, Ch. 405, L. 1977; R.C.M. 1947, 84-1501.1(c).

15-31-206. Repealed. Sec. 5, Ch. 667, L. 1983.

History: En. 84-1501.1 by Sec. 1, Ch. 122, L. 1959; amd. Sec. 1, Ch. 405, L. 1977; R.C.M. 1947, 84-1501.1(d).

15-31-207. Repealed. Sec. 5, Ch. 667, L. 1983.

History: En. 84-1501.1 by Sec. 1, Ch. 122, L. 1959; amd. Sec. 1, Ch. 405, L. 1977; R.C.M. 1947, 84-1501.1(e).

15-31-208. Repealed. Sec. 10, Ch. 807, L. 1991.

History: En. Sec. 3, Ch. 667, L. 1983; amd. Sec. 2, Ch. 534, L. 1989.

15-31-209. Repealed. Sec. 17, Ch. 143, L. 2001.

History: En. Sec. 4, Ch. 667, L. 1983.

Part 3
Allocation and Apportionment of Income

15-31-301. Corporations subject to allocation and apportionment. (1) Any corporation having income from business activity which is taxable both within and without this state shall allocate and apportion its net income as provided in this part.

(2) A corporation engaged in a unitary business within and without Montana must apportion its business income as provided for under 15-31-305. A business is unitary when the operation of the business within the state is dependent upon or contributory to the operation of the business outside the state or if the units of the business within and without the state are closely allied and not capable of separate maintenance as independent businesses.

(3) A corporation not engaged in a unitary business must allocate its business income by means of separate accounting methods, provided its books and records are so kept that the income and expenses attributable to business operations within the state can be properly segregated from total income and expense. If the corporation's books and records do not permit

such proper segregation, its business income must be apportioned according to the provisions of 15-31-305.

History: **En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(1).**

15-31-302. Definitions. (1) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(3) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(4) "Nonbusiness income" means all income other than business income.

(5) "Sales" means all gross receipts of the taxpayer not allocated under 15-31-304.

(6) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

History: **En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(2).**

15-31-303. When taxable in another state. For the purposes of allocation and apportionment of income, a corporation is taxable in another state if:

(1) by reason of the corporation's business activities carried on in that state it is subjected to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) that state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, the state does or does not subject the taxpayer to a net income tax.

History: **En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(3); amd. Sec. 10, Ch. 20, L. 1985.**

15-31-304. Allocation of nonbusiness income. (1) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (2) through (5) of this section.

(2) (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state; or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(3) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property had a situs in this state at the time of the sale; or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(4) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(5) (a) Patent and copyright royalties are allocable to this state if and to the extent that:

(i) the patent or copyright is utilized by the payer in this state; or

(ii) the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(4) thru (8).

15-31-305. Apportionment of business income. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is 3.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(9).

15-31-306. Definition of property factor. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state in the production of business income during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in the production of business income during the tax period.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(10).

15-31-307. Values used for property factor. (1) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at 8 times the net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(2) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(11), (12).

15-31-308. Definition of payroll factor. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation attributable to the production of business income and the denominator of which is the total amount paid everywhere during the tax period for compensation attributable to the production of business income.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(13).

15-31-309. Payroll factor for compensation in this state. Compensation is paid in this state if:

(1) the individual's service is performed entirely within the state;

(2) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(3) some of the service is performed in the state and:

(a) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(b) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state.

History: **En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(14).**

15-31-310. Definition of sales factor. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

History: **En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(15).**

15-31-311. Sales factor for sales in this state. (1) Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and:

(i) the purchaser is the United States government; or

(ii) the taxpayer is not taxable in the state of the purchaser.

(2) Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

History: **En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(16), (17).**

15-31-312. Apportionment formula — unitary business provisions. If the allocation and apportionment provisions of this part do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) separate accounting, provided the taxpayer's activities in this state are separate and distinct from its operations conducted outside this state and are not a part of a unitary business operation conducted within and without this state. For purposes of this part, a "unitary business" is one in which the business conducted within the state is dependent upon or contributory to the business conducted outside this state or if the units of the business within and without this state are closely allied and not capable of separate maintenance as independent businesses.

(2) the exclusions of any one or more of the factors;

(3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

History: **En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(18).**

15-31-313. Rules. The department of revenue shall prescribe regulations to carry out this part and shall publish such regulations and amendments thereto.

History: **En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(19).**

15-31-314 through 15-31-320 reserved.

15-31-321. Definitions. As used in 15-31-321 through 15-31-326, unless the context requires otherwise, the following definitions apply:

(1) "Affiliated corporation" means a United States parent corporation and any subsidiary of which more than 50% of the voting stock is owned directly or indirectly by another corporate member of the water's-edge combined group.

(2) "United States" means the 50 states of the United States and the District of Columbia.

(3) "Water's-edge combined group" means all corporations or entities included in the election of a taxpayer under 15-31-322.

History: En. Sec. 1, Ch. 616, L. 1987.

15-31-322. Water's-edge election. Notwithstanding any other provisions of law, a taxpayer subject to the taxes imposed under this chapter may apportion its income under this section. A return under a water's-edge election must include the income and apportionment factors of the following affiliated corporations only:

(1) a corporation incorporated in the United States in a unitary relationship with the taxpayer and eligible to be included in a federal consolidated return as described in sections 1501 through 1505 of the Internal Revenue Code that has more than 20% of its payroll and property assignable to locations inside the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection (1), the 80% stock ownership requirements of section 1504 of the Internal Revenue Code must be reduced to ownership of over 50% of the voting stock directly or indirectly owned or controlled by an includable corporation.

(2) domestic international sales corporations, as described in sections 991 through 994 of the Internal Revenue Code, and foreign sales corporations, as described in sections 921 through 927 of the Internal Revenue Code;

(3) export trade corporations, as described in sections 970 and 971 of the Internal Revenue Code;

(4) foreign corporations deriving gain or loss from disposition of a United States real property interest to the extent recognized under section 897 of the Internal Revenue Code;

(5) a corporation incorporated outside the United States if over 50% of its voting stock is owned directly or indirectly by the taxpayer and if more than 20% of the average of its payroll and property is assignable to a location inside the United States.

History: En. Sec. 2, Ch. 616, L. 1987.

15-31-323. Apportionment factors. For purposes of 15-31-322(1) and (5), the location of payroll and property is determined under the individual state's laws and regulations that set forth the apportionment formulas used to assign net income subject to taxes on or measured by net income. If a state does not impose a tax on or measured by net income, apportionment is determined under this chapter.

History: En. Sec. 3, Ch. 616, L. 1987.

15-31-324. Water's-edge election period — consent. (1) A water's-edge election may be made by a taxpayer and is effective only if every affiliated corporation subject to the taxes imposed under this chapter consents to the election. Consent by the common parent of an affiliated group constitutes consent of all members of the group. An affiliated corporation that becomes subject to taxes under this chapter subsequent to the water's-edge election is considered to have consented to the election.

(2) Each water's-edge election must be for 3-year renewable periods, except as follows:

(a) No water's-edge election may be made for an income year beginning before October 1, 1987.

(b) A water's-edge election may be changed by a taxpayer prior to the end of each 3-year period only with the permission of the department of revenue. In granting a change of election, the department shall impose reasonable conditions that are necessary to prevent the avoidance of tax or clearly reflect income for the election period prior to the change.

History: En. Sec. 4, Ch. 616, L. 1987.

15-31-325. Treatment of dividends. For purposes of 15-31-321 through 15-31-326, dividends must be treated as follows:

(1) Dividends received from corporations incorporated outside the United States, to the extent taxable, are considered income subject to apportionment.

(2) The after-tax net income of United States corporations excluded from eligibility as affiliated corporations under 15-31-322(1) and possession corporations described in sections 931 through 934 and 936 of the Internal Revenue Code are considered dividends received from corporations incorporated outside the United States.

(3) Amounts included in income under sections 951 through 962 and 964 of the Internal Revenue Code are considered dividends from corporations incorporated outside the United States.

(4) Eighty percent of all dividends apportionable under this section must be excluded from income subject to apportionment.

(5) "Deemed" distributions, as set forth in section 78 of the Internal Revenue Code, and corresponding amounts with respect to dividends considered received under subsection (2) of this section must be excluded from the income of the water's-edge combined group.

(6) The dividends apportionable under this section are in lieu of any expenses attributable to dividend income.

(7) A dividend from a corporation required to be combined in the water's-edge combined group must be eliminated from the calculation of apportionable income.

History: En. Sec. 5, Ch. 616, L. 1987.

15-31-326. Domestic disclosure spreadsheet. The department of revenue may require taxpayers making a water's-edge election to submit within 6 months after the taxpayer files its federal income tax return a domestic disclosure spreadsheet to provide full disclosure of the income reported to each state for the year, the tax liability for each state, the method used for allocating or apportioning income to the states, and the identity of the water's-edge corporate group and those of its United States affiliated corporations.

History: En. Sec. 6, Ch. 616, L. 1987.

Part 4
Corporation Income Tax

Part Cross-References

Credit for alternative fuel motor vehicle conversion, 15-30-164.

15-31-401. Application of license and income taxes. (1) It is the intent of the legislature that the corporation license tax shall be applied to all corporations subject to taxation under part 1 of this chapter. Except as provided in subsection (2), the income tax provided by this part shall be applied to corporations that are not taxable under part 1 of this chapter but are taxable under an income tax.

(2) During its first 5 taxable years of activity in Montana, the net income earned from research and development activities by a research and development firm as described in 15-31-103 is not subject to either the corporation license tax provided in part 1 of this chapter or to the corporation income tax provided in this part.

History: En. Sec. 1, Ch. 82, L. 1971; R.C.M. 1947, 84-6901; amd. Sec. 5, Ch. 659, L. 1987.

15-31-402. Short title — administration of part. This part shall be known as and may be cited as the "Corporation Income Tax", and it shall be administered by the department of revenue.

History: En. Sec. 2, Ch. 82, L. 1971; amd. Sec. 255, Ch. 516, L. 1973; R.C.M. 1947, 84-6902.

15-31-403. Rate of tax imposed — income from sources within state defined — alternative tax. (1) Except as provided in 15-31-401, there is hereby imposed upon every corporation for each taxable year an income tax at the rate specified in 15-31-121 and 15-31-122 upon its net income derived from sources within this state for taxable years beginning after December 31, 1970, other than income for any period for which the corporation is subject to taxation under part 1 of this chapter, according to or measured by its net income.

(2) Income from sources within this state includes income from tangible or intangible property located in or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce, but

does not include interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located within the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

(3) Pursuant to Article III, section 2, of the Multistate Tax Compact, any corporation required to file a return under this part and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana does not exceed $100,000 may elect to pay a tax of 1/2 of 1% of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under this section. The gross volume of sales made in Montana during the taxable year shall be determined according to Article IV, sections 16 and 17, of the Multistate Tax Compact.

History: En. Sec. 3, Ch. 82, L. 1971; amd. Sec. 1, Ch. 367, L. 1973; amd. Sec. 1, Ch. 247, L. 1977; R.C.M. 1947, 84-6903; amd. Sec. 6, Ch. 659, L. 1987.

Cross-References

Multistate Tax Compact, Title 15, ch. 1, part 6.

15-31-404. Offset for license taxes — income tax collected considered license tax. There shall be offset against the corporation income tax imposed for any period the amount of any tax imposed against it for the same period under parts 1 through 3 and 5 of this chapter. In the event that taxes, interest, and penalties have been or will be assessed against, paid by, or collected from a corporation under this part, which assessment, payment, or collection should have been made under parts 1 through 3 and 5 of this chapter, such taxes, interest, and penalties shall be considered as having been assessed, paid, or collected under parts 1 through 3 and 5 as of the date they were made.

History: En. Sec. 4, Ch. 82, L. 1971; R.C.M. 1947, 84-6904.

15-31-405. Information return — period for assessment of tax. When a corporation formerly subject to tax under part 1 of this chapter becomes subject to tax under this part, it shall file an information return for the income year in which the change occurs. The tax for the year in which the change occurs will be assessed under parts 1 through 3 and 5 and not under this part. For years subsequent to the year in which the change occurs, the tax will be assessed under this part.

History: En. Sec. 5, Ch. 82, L. 1971; R.C.M. 1947, 84-6905.

15-31-406. License tax sections incorporated by reference. The provisions of the following sections of this chapter are incorporated into this part by reference and made a part of this part:

(1) that part of 15-31-101 that defines the term "corporation" and 15-31-102, which specifies the classes of organizations whose income may not be taxed;

(2) sections 15-31-111 through 15-31-114, 15-31-117 through 15-31-119, 15-31-141, 15-31-142, 15-31-301 through 15-31-313, 15-31-501 through 15-31-506, 15-31-509, 15-31-511, 15-31-525, 15-31-526, 15-31-531, 15-31-532, 15-31-541, and 15-31-543, except that the term "gross income" must be construed as excluding the net amount of interest income from valid obligations of the United States and except that wherever the words "tax", "license tax", "license fee", "corporation excise tax", or like words appear, referring to the tax imposed under part 1 of this chapter, there is substituted the words "income tax".

History: En. Sec. 6, Ch. 82, L. 1971; R.C.M. 1947, 84-6906; amd. Sec. 14, Ch. 439, L. 1981; amd. Sec. 50, Ch. 370, L. 1987; amd. Sec. 2, Ch. 538, L. 1989; amd. Sec. 2, Ch. 135, L. 1993.

15-31-407. Employment of personnel — rules. The department of revenue may employ personnel and adopt rules and forms as the department finds necessary to place this part in operation and to carry out its provisions.

History: En. Sec. 7, Ch. 82, L. 1971; amd. Sec. 258, Ch. 516, L. 1973; R.C.M. 1947, 84-6907.

15-31-408. Repealed. Sec. 66, Ch. 422, L. 1997.

History: En. Sec. 8, Ch. 82, L. 1971; R.C.M. 1947, 84-6908.

Part 5

Administration and Collection

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-31-501. Department rules. The department of revenue shall have power to prescribe forms for returns and notices and such other regulations as may from time to time be found necessary for the purpose of carrying into effect the provisions of this chapter.

History: En. Sec. 8, Ch. 79, L. 1917; re-en. Sec. 2303, R.C.M. 1921; amd. Sec. 4, Ch. 146, L. 1923; amd. Sec. 4, Ch. 166, L. 1933; re-en. Sec. 2303, R.C.M. 1935; amd. Sec. 5, Ch. 186, L. 1963; amd. Sec. 60, Ch. 516, L. 1973; R.C.M. 1947, 84-1508(part).

15-31-502. Assessment and payment of tax — estimated tax payment — amount of required installments. (1) All taxpayers shall compute the amount of tax payable under this chapter and shall remit the amount to the department of revenue on or before the 15th day of the 5th month following the close of the taxable period.

(2) (a) Each corporation shall make estimated tax payments if its annual estimated tax is $5,000 or more. The estimated payments must be made in installments, as follows, if the $5,000 threshold is met or exceeded:

(i) For a corporation taxed on a calendar-year basis:

For the following required installments the due date is:

1st	April 15
2nd	June 15
3rd	September 15
4th	December 15

(ii) For a corporation taxed on a fiscal-year basis:

For the following required installments the due date is:

1st	15th day of the 4th month
2nd	15th day of the 6th month
3rd	15th day of the 9th month
4th	15th day of the 12th month

(b) Except as provided in 15-31-510, the amount of any required installment is 25% of the required annual payment. The required annual payment is the lesser of:

(i) 80% of the tax shown on the return for the taxable year or, if a return is not filed, 80% of the tax for that year; or

(ii) 100% of the tax shown on the return of the corporation for the preceding taxable year if the preceding taxable year was a period of 12 months and if the corporation filed a return for that year.

(3) The application of this section to taxable years of less than 12 months must be in accordance with rules adopted by the department.

(4) At the election of the corporation, any installment of the estimated tax may be paid before the date prescribed for its payment.

History: En. Sec. 5, Ch. 79, L. 1917; re-en. Sec. 2300, R.C.M. 1921; amd. Sec. 2, Ch. 146, L. 1923; re-en. Sec. 2300, R.C.M. 1935; amd. Sec. 1, Ch. 209, L. 1945; amd. Sec. 1, Ch. 102, L. 1961; amd. Sec. 4, Ch. 186, L. 1963; amd. Sec. 1, Ch. 324, L. 1969; amd. Sec. 67, Ch. 405, L. 1973; R.C.M. 1947, 84-1505(1); amd. Sec. 4, Ch. 634, L. 1979; amd. Sec. 1, Ch. 182, L. 1981; amd. Sec. 2, Ch. 9, Sp. L. June 1989; amd. Sec. 1, Ch. 92, L. 1993.

15-31-503. Deficiency assessment — notice — interest. (1) If the department of revenue determines that the amount of tax due is greater than the amount disclosed by the return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest on any deficiency assessment shall bear interest from the date specified in 15-31-502 for payment of the tax. A certificate by the department of the mailing of the notices

specified in this subsection shall be prima facie evidence of the computation and levy of the deficiency in tax and of the giving of the notices.

History: **En. Sec. 1, Ch. 186, L. 1963; amd. Sec. 68, Ch. 405, L. 1973; R.C.M. 1947, 84-1508.1(a); amd. Sec. 10, Ch. 811, L. 1991.**

15-31-504. Estimated tax on failure to file. (1) If any taxpayer fails to make return as herein required, the department of revenue is authorized to make an estimate of the taxes due from such taxpayer from any information in its possession.

(2) For the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of net income of any corporations where information has been obtained, the department shall also have power to examine or to cause to have examined by any agent or representative designated by it for that purpose any books, papers, records, or memoranda bearing upon the matters required to be included in the return and may require the attendance of any officer or employee of the corporation rendering such return or the attendance of any other person having knowledge in the premises and may take testimony and require proof material for its information.

History: **En. Sec. 13, Ch. 166, L. 1933; re-en. Sec. 2303.9, R.C.M. 1935; amd. Sec. 2, Ch. 142, L. 1969; amd. Sec. 67, Ch. 516, L. 1973; R.C.M. 1947, 84-1517(1), (2).**

15-31-505. Subpoenas — investigation of income, and shifting. (1) Jurisdiction is hereby conferred upon the district court of the first judicial district of the state of Montana in and for the county of Lewis and Clark to compel attendance of witnesses to testify before the department of revenue, together with the production of books and such other testimony by appropriate process.

(2) When the department has reason to believe that the business of any corporation is so conducted as either directly or indirectly to distort the true net income of the corporation and the net income properly attributable to this state, whether by the arbitrary shifting of income through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another corporation carrying on business under a substantially common control, it may require the disclosure of such facts as it deems necessary for the proper computation of the entire net income and the net income properly attributable to this state, and in determining the same, the department shall have regard to the fair profits which would normally arise from the conduct of the business.

History: **En. Sec. 8, Ch. 79, L. 1917; re-en. Sec. 2303, R.C.M. 1921; amd. Sec. 4, Ch. 146, L. 1923; amd. Sec. 4, Ch. 166, L. 1933; re-en. Sec. 2303, R.C.M. 1935; amd. Sec. 5, Ch. 186, L. 1963; amd. Sec. 60, Ch. 516, L. 1973; R.C.M. 1947, 84-1508(part).**

15-31-506. Copy of federal return required — report of amended federal return. Every corporation shall, upon request of the department of revenue, furnish a copy of its federal income tax return and the computation schedule filed for the taxable year or years that the department may specify in its request. If the amount of a corporation's taxable income reported on its federal income tax return or the computation schedule filed for a taxable year is changed or corrected by the United States internal revenue service or other competent authority, the corporation shall file an amended Montana return with the department within 90 days after receiving official notice of the change or correction. A corporation filing an amended federal income tax return changing or correcting its taxable income for a taxable year shall also file an amended Montana return with the department within 90 days after filing an amended federal income tax return.

History: **En. Sec. 13, Ch. 166, L. 1933; re-en. Sec. 2303.9, R.C.M. 1935; amd. Sec. 2, Ch. 142, L. 1969; amd. Sec. 67, Ch. 516, L. 1973; R.C.M. 1947, 84-1517(3); amd. Sec. 3, Ch. 68, L. 1999.**

15-31-507. Repealed. Sec. 5, Ch. 135, L. 1993.

History: **En. Sec. 7, Ch. 79, L. 1917; re-en. Sec. 2302, R.C.M. 1921; amd. Sec. 3, Ch. 146, L. 1923; re-en. Sec. 2302, R.C.M. 1935; amd. Sec. 59, Ch. 516, L. 1973; R.C.M. 1947, 84-1507.**

15-31-508. Repealed. Sec. 5, Ch. 135, L. 1993.

History: **En. Sec. 14, Ch. 166, L. 1933; re-en. Sec. 2303.10, R.C.M. 1935; amd. Sec. 68, Ch. 516, L. 1973; R.C.M. 1947, 84-1518.**

15-31-509. Periods of limitation. (1) Except as otherwise provided in 15-31-544 and this section, a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 3 years from the date that the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. When, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax may not apply when:

(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax if the suspension of the limitation set forth in this section lasts:

(i) only as long as the suspension of the federal statute of limitation; or

(ii) until 1 year after the federal changes have become final or an amended federal return is filed as a result of the suspension of the federal statute, whichever is the latest in time; or

(b) a taxpayer has failed to file an amended Montana return, as required by 15-31-506, until 3 years after the federal changes become final or the amended federal return was filed, whichever the case may be.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 3 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period the taxpayer files a claim for the refund or credit or the department has determined the existence of the overpayment and has approved the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed in the event a claim is not filed must automatically be extended.

(3) If a claim for refund or credit is based upon an overpayment attributable to a net loss carryback adjustment as provided in 15-31-119, in lieu of the 3-year period provided for in subsection (1), the period must be the period that ends with the expiration of the 15th day of the 41st month following the end of the tax year of the net loss that results in the carryback.

(4) If the year of the net operating loss is open under either state or federal waivers, the year to which the loss is carried back will remain open for the purposes of the loss carryback and for 12 months following the expiration of the state or federal waiver, even though the claim would otherwise be barred under this section.

History: En. Sec. 2, Ch. 186, L. 1963; amd. Sec. 1, Ch. 142, L. 1969; amd. Sec. 61, Ch. 516, L. 1973; amd. Sec. 1, Ch. 101, L. 1974; R.C.M. 1947, 84-1508.2; amd. Sec. 11, Ch. 79, L. 1983; amd. Sec. 2, Ch. 222, L. 1983; amd. Sec. 3, Ch. 51, L. 1997; amd. Sec. 4, Ch. 68, L. 1999.

15-31-510. Estimated payments — tax returns — interest. (1) For corporations failing to make estimated payments according to the schedule provided in 15-31-502(2), there is charged interest in the amount of 12% a year calculated as follows:

(a) The amount of underpayment is the amount of the required installment set forth in 15-31-502 that exceeds the amount, if any, of the installment paid on or before the last date prescribed for payment.

(b) Notwithstanding the provisions of subsection (1)(a), interest with respect to an underpayment of any installment may not be charged if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds the amount that would have been required to be paid on or before that date if the estimated tax were an amount equal to 80% of the tax for the taxable year, computed by placing on an annualized basis the taxable income:

(i) for the first 3 months of the taxable year in the case of the installment required to be paid in the 4th month;

(ii) for the first 3 months or for the first 5 months of the taxable year in the case of the installment required to be paid in the 6th month;

(iii) for the first 6 months or for the first 8 months of the taxable year in the case of the installment required to be paid in the 9th month; and

(iv) for the first 9 months or for the first 11 months of the taxable year in the case of the installment required to be paid in the 12th month of the taxable year.

(c) For purposes of subsection (1)(b), the taxable income must be placed on an annualized basis by:

(i) multiplying by 12 the taxable income referred to in subsection (1)(b); and

(ii) dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9, or 11, as the case may be) referred to in subsection (1)(b).

(d) Notwithstanding the provisions of subsections (1)(a) through (1)(c), interest with respect to an underpayment of any installment may not be charged if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds 80% of the amount determined under subsection (1)(e).

(e) To determine the amount for any installment:

(i) take the taxable income for all months during the taxable year preceding the filing month;

(ii) divide the amount by the base period percentage for all months during the taxable year preceding the filing month;

(iii) determine the tax on the amount calculated under subsection (1)(e)(ii); and

(iv) multiply the tax computed under subsection (1)(e)(iii) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(f) For purposes of this subsection (1):

(i) the base period percentage for any period of months is the average percentage that the taxable income for the corresponding months in each of the 3 preceding taxable years bears to the taxable income of the 3 preceding years;

(ii) the term "filing month" means the month in which the installment is required to be paid;

(iii) this subsection (1) applies only if the base period percentage for any 6 consecutive months of the taxable year equals or exceeds 70%; and

(iv) the department may by rule provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances.

(2) Except as provided in subsection (1), if any tax due under this chapter is not paid when due as provided in 15-31-545, by reason of extension or otherwise, interest is added to the tax due as provided in 15-1-216.

History: En. Sec. 3, Ch. 9, Sp. L. June 1989; amd. Sec. 2, Ch. 92, L. 1993; amd. Sec. 2, Ch. 54, L. 1995; amd. Sec. 4, Ch. 51, L. 1997; amd. Sec. 12, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-31-511. Confidentiality of tax records. (1) Except as provided in this section in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule of the department of revenue under this chapter.

(2) (a) An officer or employee charged with custody of returns and reports required by this chapter may not be ordered to produce any of them or evidence of anything contained in them in any administrative proceeding or action or proceeding in any court, except:

(i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

(ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

(b) If the production of a return, report, or information contained in them is ordered, the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer who filed the return or report or to the taxpayer's authorized representative;

(b) the publication of statistics prepared in a manner that prevents the identification of particular returns, reports, or items from returns or reports;

(c) the inspection of returns and reports by the attorney general or other legal representative of the state in the course of an administrative proceeding or litigation under this chapter;

(d) access to information under subsection (4); or

(e) the director of revenue from permitting a representative of the commissioner of internal revenue of the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an investigation of the income or return of a corporation. The director of revenue may not furnish that information to a person representing the United States or another state unless the United States or the other state grants substantially similar privileges to an officer of this state charged with the administration of this chapter.

(4) The department shall on request:

(a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection (1); and

(b) deliver corporation income tax data to the legislative fiscal analyst and the office of budget and program planning, but the information furnished to the legislative fiscal analyst and the office of budget and program planning is subject to the same restrictions on disclosure outside those offices as provided in subsection (1).

(5) A person convicted of violating this section shall be fined not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. If a public servant, as defined in 45-2-101, is convicted of violating this section, the person forfeits office and may not hold any public office or public employment in the state for a period of 1 year after conviction.

History: En. Sec. 1, Ch. 135, L. 1993.

15-31-512 through 15-31-520 reserved.

15-31-521. Closing agreements. (1) The director of revenue or any person authorized in writing by him is authorized to enter into an agreement with any taxpayer relating to the liability of such taxpayer in respect to the tax imposed by this chapter for any taxable period.

(2) Any such agreement is final and conclusive, and except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under such agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, the agreement may not be annulled, modified, set aside, or disregarded.

History: En. 84-1526 by Sec. 1, Ch. 353, L. 1977; R.C.M. 1947, 84-1526; amd. Sec. 23, Ch. 581, L. 1979.

15-31-522. When immediate payment demanded. If the department of revenue finds that the assessment or collection of the tax or a deficiency in tax due under any corporation license tax statute of Montana for any taxable period will be jeopardized in whole or in part by delay, it may mail notice of its findings to the taxpayer, together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the department may declare the taxable period of the taxpayer immediately terminated and shall mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax based on the period declared terminated. A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once.

History: En. Sec. 1, Ch. 246, L. 1969; amd. Sec. 58, Ch. 516, L. 1973; R.C.M. 1947, 84-1505.2.

15-31-523. Suspension or forfeiture on delinquency. (1) If a tax computed and levied hereunder is not paid or if a return is not filed before 5 p.m. on the last day of the 11th month after the date of delinquency, the corporate powers, rights, and privileges of the delinquent taxpayer, if it be a domestic corporation, shall be suspended, and if the delinquent taxpayer be a foreign corporation, it shall thereupon forfeit its rights to do intrastate business in this state. Provided that if any domestic corporation shall fail for a period of 5 consecutive years to either file a return or to pay the corporation license tax, the department of revenue shall notify such corporation by mail addressed to the latest address on file in its office that such corporation will become dissolved if it fails to file all delinquent reports and pay all delinquent corporation license taxes within a period of 60 days from and after the mailing of such notice. If such delinquent reports are not made and all delinquent corporation licenses are not paid before the expiration of said 60-day period, the department shall certify this fact to the secretary of state, and upon receipt of such certificate, the corporation shall be dissolved and the secretary of state shall indicate, by his records, such dissolution.

(2) The department shall transmit the name of each such corporation to the secretary of state, who shall immediately record the same in such manner that it may be available to the public. The suspension, forfeiture, or dissolution herein provided for shall become effective immediately when such record is made, and the certificate of the secretary of state shall be conclusive evidence of such suspension, forfeiture, or dissolution.

History: En. Sec. 10, Ch. 166, L. 1933; re-en. Sec. 2303.6, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1947; amd. Sec. 64, Ch. 516, L. 1973; R.C.M. 1947, 84-1514; amd. Sec. 69, Ch. 575, L. 1981.

15-31-524. Reviver of corporation after suspension or forfeiture. Any corporation which has suffered the suspension or forfeiture referred to in the preceding section may be relieved therefrom upon making application therefor in writing supported by a certificate from the department of revenue showing that the required return has been made and filed and/or that the tax and interest and penalties have been paid, for which the suspension or forfeiture occurred. Application for reviver may be made by any stockholder or creditor of the corporation or by a majority of the surviving trustees or directors; and the same shall be filed with the secretary of state, for which he shall receive a filing and recording fee of $15. In case the application is made more than 1 year from the date the suspension or forfeiture occurred, the applicant shall pay twice the amount of the tax and penalties due the state for the taxable year with respect to which the suspension or forfeiture occurred. Upon such payment, the secretary of state shall issue a certificate of reviver for which he shall collect a fee of $15 and thereupon the applicant shall be revived. The reviver shall be without prejudice to any action, defense, or right which has accrued by reason of the original suspension or forfeiture. The certificate of reviver shall be prima facie evidence of the reviver. Any certificate of reviver provided for in this section may be recorded in the office of the county clerk and recorder in any county of this state.

History: En. Sec. 11, Ch. 166, L. 1933; re-en. Sec. 2303.7, R.C.M. 1935; amd. Sec. 1, Ch. 49, L. 1947; amd. Sec. 15, Ch. 117, L. 1961; amd. Sec. 1, Ch. 52, L. 1967; amd. Sec. 65, Ch. 516, L. 1973; R.C.M. 1947, 84-1515; amd. Sec. 1, Ch. 156, L. 1987.

15-31-525. Levy upon and sale of property. If any tax imposed by this chapter or any portion of such tax is not paid when due, the department of revenue may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

History: En. Sec. 5, Ch. 79, L. 1917; re-en. Sec. 2300, R.C.M. 1921; amd. Sec. 2, Ch. 146, L. 1923; re-en. Sec. 2300, R.C.M. 1935; amd. Sec. 1, Ch. 209, L. 1945; amd. Sec. 1, Ch. 102, L. 1961; amd. Sec. 4, Ch. 186, L. 1963; amd. Sec. 1, Ch. 324, L. 1969; amd. Sec. 67, Ch. 405, L. 1973; R.C.M. 1947, 84-1505(2); amd. Sec. 15, Ch. 439, L. 1981.

15-31-526. Action by attorney general. Action may be brought by the attorney general of the state at the instance of the department, in the name of the state, to recover the amount of any taxes, penalties, and interest due under this chapter.

History: En. Sec. 5, Ch. 79, L. 1917; re-en. Sec. 2300, R.C.M. 1921; amd. Sec. 2, Ch. 146, L. 1923; re-en. Sec. 2300, R.C.M. 1935; amd. Sec. 1, Ch. 209, L. 1945; amd. Sec. 1, Ch. 102, L. 1961; amd. Sec. 4, Ch. 186, L. 1963; amd. Sec. 1, Ch. 324, L. 1969; amd. Sec. 67, Ch. 405, L. 1973; R.C.M. 1947, 84-1505(3); amd. Sec. 12, Ch. 79, L. 1983.

15-31-527. Repealed. Sec. 54, Ch. 439, L. 1981.

History: En. Sec. 1, Ch. 53, L. 1967; amd. Sec. 57, Ch. 516, L. 1973; R.C.M. 1947, 84-1505.1.

15-31-528 through 15-31-530 reserved.

15-31-531. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as hereinafter provided for, interest shall be allowed on overpayments at the same rate as is charged on delinquent taxes due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment. Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. No interest shall be allowed:

(a) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(b) if the amount of interest is less than $1.

(3) A payment not made incident to a bona fide and orderly discharge of an actual corporation license tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 1, Ch. 186, L. 1963; amd. Sec. 68, Ch. 405, L. 1973; R.C.M. 1947, 84-1508.1(part); amd. Sec. 2, Ch. 589, L. 1981.

Cross-References

Interest not allowed on refund resulting from net operating loss carryback or carryover, 15-31-114.

15-31-532. Application for refund — appeal from denial. If the department of revenue disallows any claim for refund, it shall notify the taxpayer as provided in 15-1-211. The taxpayer may seek review of the decision pursuant to 15-1-211.

History: En. Sec. 1, Ch. 186, L. 1963; amd. Sec. 68, Ch. 405, L. 1973; R.C.M. 1947, 84-1508.1(part); amd. Sec. 11, Ch. 811, L. 1991.

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

15-31-533 through 15-31-540 reserved.

15-31-541. Site of failure to act — evidence. The failure to do any act required by or under the provisions of this chapter shall be deemed an act committed in the office of the department of revenue in Helena, Montana. The certificates of the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied as required by or under the provisions of this chapter shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

History: En. Sec. 8, Ch. 166, L. 1933; re-en. Sec. 2303.4, R.C.M. 1935; amd. Sec. 63, Ch. 516, L. 1973; R.C.M. 1947, 84-1512.

15-31-542. Repealed. Sec. 18, Ch. 79, L. 1983.

History: En. Sec. 9, Ch. 166, L. 1933; re-en. Sec. 2303.5, R.C.M. 1935; R.C.M. 1947, 84-1513.

15-31-543. Penalties. (1) If a corporation fails to file a return at the time specified in 15-31-502 or files a false or fraudulent return, the corporation is liable to a penalty of not more than $5,000 to be recovered by an action in a court of competent jurisdiction.

(2) A corporation that purposely fails to file a return at the time specified in 15-31-502 or that purposely files a false or fraudulent return may be adjudged by a court of competent jurisdiction to forfeit the right to continue to engage in business in the state as a corporation until the license fee, together with all penalties and costs, is paid. The forfeiture may be enforced by proper proceedings in court.

(3) Each officer or employee of any corporation or other person who, without fraudulent intent, fails to file, sign, or verify any return or to supply any information within the time required by the provisions of this chapter is liable for the penalty imposed by 15-1-216. The

department shall assess and collect any penalty in the same manner as is provided in this chapter with regard to delinquent taxes.

History: **(1)En. Sec. 6, Ch. 79, L. 1917; re-en. Sec. 2301, R.C.M. 1921; re-en. Sec. 2301, R.C.M. 1935; Sec. 84-1506, R.C.M. 1947; (2)En. Sec. 12, Ch. 166, L. 1933; re-en. Sec. 2303.8, R.C.M. 1935; amd. Sec. 66, Ch. 516, L. 1973; Sec. 84-1516, R.C.M. 1947; R.C.M. 1947, 84-1506, 84-1516; amd. Sec. 13, Ch. 427, L. 1999.**

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-31-544. Action on false or fraudulent return. Whenever a return is required to be filed and the taxpayer files a fraudulent return or fails to file the return, the department may at any time assess the tax or begin a proceeding in court for the collection of the tax without assessment.

History: **En. Sec. 1, Ch. 408, L. 1981; amd. Sec. 1, Ch. 222, L. 1983.**

15-31-545. Delinquent penalty for corporate taxpayers. If the tax for any corporation is not paid on or before the due date of the return, as provided in 15-31-111(2), or if the tax is not paid on or before the due date of the return, as provided in 15-31-111(3), there is assessed a penalty as provided in 15-1-216(1)(c).

History: **En. Sec. 1, Ch. 51, L. 1997; amd. Sec. 14, Ch. 427, L. 1999.**

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-31-546 through 15-31-550 reserved.

15-31-551. Certified copies of corporation license tax returns to taxpayer — fee. Certified copies of returns filed for corporation license tax under 15-31-111 may be furnished by the department of revenue to the taxpayer or his duly authorized representative upon payment of 50 cents for each page.

History: **En. Sec. 1, Ch. 187, L. 1965; amd. Sec. 20, Ch. 516, L. 1973; R.C.M. 1947, 84-732(part).**

15-31-552. Corporation license dissolution or withdrawal certificates and tax clearance certificates furnished. (1) For purposes of voluntary withdrawal or dissolution as set forth in 35-1-944, upon request of a corporation, the department of revenue may furnish to it a dissolution or withdrawal certificate verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or withdrawal.

(2) Upon final withdrawal or dissolution, the department may furnish to a corporation a tax clearance certificate verifying that the corporation has filed all applicable returns and that all taxes have been paid through and including the corporation's final year of existence in Montana.

History: **En. Sec. 2, Ch. 187, L. 1965; amd. Sec. 21, Ch. 516, L. 1973; R.C.M. 1947, 84-733; amd. Sec. 1, Ch. 658, L. 1991; amd. Sec. 2, Ch. 69, L. 1999.**

15-31-553. Fees to reimburse department for costs — deposit in general fund. All moneys collected under 15-31-551 and 15-31-552 shall be required to reimburse the department of revenue for costs involved in the preparation of the copies and certificates. All such moneys collected shall go into the general fund.

History: **En. Sec. 3, Ch. 187, L. 1965; amd. Sec. 22, Ch. 516, L. 1973; R.C.M. 1947, 84-734.**

15-31-554. Returns to which sections apply. The provisions of 15-31-551 through 15-31-553 shall apply to all returns on file and all returns to be filed hereafter.

History: **En. Sec. 4, Ch. 187, L. 1965; R.C.M. 1947, 84-735.**

Part 6
Lists of Corporations

15-31-601. Repealed. Sec. 2, Ch. 252, L. 1989.

History: **En. Sec. 1, Ch. 469, L. 1973; R.C.M. 1947, 84-708.2; amd. Sec. 24, Ch. 581, L. 1979.**

15-31-602. Repealed. Sec. 2, Ch. 252, L. 1989.

History: **En. Sec. 2, Ch. 469, L. 1973; R.C.M. 1947, 84-708.3.**

15-31-603. List of entities furnished by secretary of state. On or before December 31 of each year, the secretary of state shall direct a list of all corporations, limited partnerships, limited liability companies, and limited liability partnerships, foreign and domestic, subject to the terms of Title 35, chapters 1, 4, 5, 8, 9, 10, and 12, to the department of revenue. The list must include the following information:

(1) the name of the entity;

(2) the principal office of the entity;

(3) the name and address of the registered agent of the entity in Montana, if applicable; and

(4) other information that the director of the department of revenue may require.

History: En. Sec. 3, Ch. 469, L. 1973; R.C.M. 1947, 84-708.4; amd. Sec. 1, Ch. 252, L. 1989; amd. Sec. 14, Ch. 143, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 143 in introductory clause in first sentence at beginning inserted "On or before December 31 of each year", near middle after "all corporations" inserted "limited partnerships, limited liability companies, and limited liability partnerships", and near end inserted references to Title 35, chapters 4, 5, 8, 9, 10, and 12; in (1) and (2) at end substituted "entity" for "corporation"; in (3) near end substituted "agent of the entity in Montana, if applicable" for "agent of the corporation in Montana"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

15-31-604 through 15-31-607. Repealed. Sec. 2, Ch. 252, L. 1989.

Compiler's Comments

Histories of Repealed Sections:

15-31-604. En. Sec. 4, Ch. 469, L. 1973; R.C.M. 1947, 84-708.5.
15-31-605. En. Sec. 5, Ch. 469, L. 1973; R.C.M. 1947, 84-708.6; amd. Sec. 25, Ch. 581, L. 1979.
15-31-606. En. Sec. 6, Ch. 469, L. 1973; R.C.M. 1947, 84-708.7.
15-31-607. En. Sec. 7, Ch. 469, L. 1973; R.C.M. 1947, 84-708.8.

Part 7
Banks and Savings and Loan Associations

15-31-701. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 5, Ch. 634, L. 1979; amd. Sec. 12, Ch. 811, L. 1991; amd. Sec. 2, Ch. 369, L. 1997.

15-31-702. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 6, Ch. 634, L. 1979; amd. Sec. 10, Ch. 703, L. 1985; amd. Sec. 12, Ch. 16, L. 1991; amd. Sec. 2, Ch. 626, L. 1991; amd. Sec. 4, Ch. 455, L. 1993; amd. Sec. 11, Ch. 18, L. 1995; amd. Sec. 3, Ch. 369, L. 1997; amd. Sec. 33, Ch. 51, L. 1999.

15-31-703. Moneyed capital and shares of banks exempt. (1) Moneyed capital and shares of banks are exempt from taxation.

(2) "Moneyed capital" means money, bonds, notes, and other evidence of indebtedness, including evidence of indebtedness secured by a mortgage on real or personal property, in the hands of individual citizens and corporations coming into competition with the business of national banks or employed in conducting a banking or investment business.

History: En. Sec. 7, Ch. 634, L. 1979.

Part 8
Foreign Capital Depository — Assessment

15-31-801. State revenue from depository — purpose and preference. (1) The legislature recognizes that revenue gains to the state and the possibility of subsequent tax reduction for Montana taxpayers are among the most significant reasons for establishing a statutory framework for the foreign capital depository, as defined in 32-8-103, and that a relatively steady, predictable flow of revenue is preferable to a volatile one. The legislature also acknowledges that the depository is subject to competitive pressures in the international financial services market. It is therefore in the state's interest to balance revenue expectations with incentives that will enhance the commercial attractiveness and viability of a depository.

(2) The legislature recognizes the hazards of fortune that may be suffered by customers of a depository who are citizens or residents of countries with unstable or repressive governments and recognizes that capital in a depository may be abandoned as a consequence of a customer's disappearance or untimely death. It is in the state's interest to provide a decent interval of time before determining that capital is abandoned and, in keeping with subsection (1), to allow a depository to charge a reasonable fee for the maintenance of the abandoned capital prior to its escheatment to the state.

History: En. Sec. 56, Ch. 382, L. 1997.

15-31-802. *(Temporary)* **Tax status — exemption guarantees.** (1) A foreign capital depository is exempt from the corporation license tax as provided in 15-31-102 until October 1, 2012.

(2) A transaction between the depository and a customer that involves tangible personal property, as defined in 32-8-103, is exempt from all forms of tax. *(Terminates September 30, 2012—sec. 90, Ch. 382, L. 1997.)*

History: En. Sec. 57, Ch. 382, L. 1997.

15-31-803. *(Temporary)* **State revenue — assessment — collection — distribution.** (1) A foreign capital depository shall pay to the department on June 15 and December 15 of each year a fee that is equal to 0.375% of the average value of assets on deposit or in a safe deposit box. The total annual rate of assessment is 0.75%. Each semiannual assessment must be based on the average balance, at the close of the last business day of the month in each of the 6-month periods prior to June 15 and December 15, of the total value of the assets on deposit or in safe deposit boxes.

(2) The basis of the value ascribed to each asset is:

(a) the U.S. dollar exchange value of the currency on deposit on the date of assessment;

(b) the spot market price of the platinum, palladium, gold, or silver held in precious metals accounts, as defined in 32-8-402, as published in The Wall Street Journal on the date of assessment; or

(c) the market value of other tangible personal property held in safe deposit boxes or other accounts at the time of the assessment, as determined by the depository using a method approved by the department. The depository shall submit to the department within 60 days of the appraisal a report that documents the method and calculations of the appraisal.

(3) The semiannual assessment fee must be deposited into the general fund. *(Terminates September 30, 2012—sec. 90, Ch. 382, L. 1997.)*

History: En. Sec. 58, Ch. 382, L. 1997; amd. Sec. 1, Ch. 3, Sp. L. May 2000.

Compiler's Comments

2000 Amendment: Chapter 3 near end of first sentence of (1) substituted "0.375% of the average value" for "0.75% of the total value", at end of second sentence substituted "0.75%" for "1.5%", and inserted third sentence concerning computation of assessment based on average balance. Amendment effective May 11, 2000.

15-31-804. Revenue audits — charges. (1) The department shall conduct an annual audit of a foreign capital depository to verify that internal financial records of the depository comply with state law and regulations pertaining to the depository and that fees owed to the state have been properly calculated and paid on time.

(2) A depository shall pay to the department the cost of an annual audit provided for in subsection (1).

(3) The department may charge the depository up to $400 a day for each auditor involved in the conduct of an audit.

History: En. Sec. 59, Ch. 382, L. 1997.

15-31-805. Deficiency assessment — notice — penalty and interest. (1) If the department determines through an audit of a foreign capital depository that the amount collected pursuant to 15-31-804 is less than the amount owed by the depository, the department shall send by certified mail to the depository a notice of the deficiency and require payment of the amount owed plus a 10% penalty within 60 days of the depository's receipt of the notice.

(2) The depository must bear the interest charge on any deficiency assessment issued by the department in accordance with subsection (1). The rate of interest charged to the depository may not exceed 12% a year.

History: En. Sec. 60, Ch. 382, L. 1997.

15-31-806. Right of appeal. A foreign capital depository that receives a notice of deficiency assessment may appeal the amount of the fee, penalty, or interest charged in accordance with 15-2-201.

History: En. Sec. 61, Ch. 382, L. 1997.

15-31-807. Limitation on penalty and interest. An amount of penalty or interest owed by the depository pursuant to 15-31-805 may not be assessed or collected with respect to the year for which a semiannual fee is assessed unless the notice of the additional amount owed is mailed within 5 years from the date the fee was paid.

History: En. Sec. 62, Ch. 382, L. 1997.

15-31-808. Action by attorney general. An action may be brought by the attorney general in the name of the state at the request of the department to recover the amount of any fees, penalties, and interest due under 15-31-803 through 15-31-806.

History: En. Sec. 63, Ch. 382, L. 1997.

CHAPTER 32

ENERGY-RELATED AND ECOLOGICAL TAX INCENTIVES

Part 1 — Investment in Energy Conservation or Alternative Energy

15-32-101. Purpose.
15-32-102. Definitions.
15-32-103. Deduction for energy-conserving investments.
15-32-104. Limitations on deduction and credit.
15-32-105. Application to new construction — rules.
15-32-106. Procedure for obtaining benefit of deduction or credit.
15-32-107. Loans by utilities and financial institutions — tax credit for interest differential for loans made prior to July 1, 1995.
15-32-108. Extension of existing classifications.
15-32-109. Credit for energy-conserving expenditures.
15-32-110 through 15-32-114 reserved.
15-32-115. Credit for geothermal system — to whom available — eligible costs — limitations.

Part 2 — Tax Credit for Installing Alternative Energy System

15-32-201. Amount of credit — to whom available.
15-32-202. Taxable years in which credit may be claimed — carryover.
15-32-203. Department to make rules.

Part 3 — Tax Deduction for Purchasing Montana-Produced Organic Fertilizer and Inorganic Fertilizer Produced as Byproduct

15-32-301. Purpose.
15-32-302. Definitions.
15-32-303. Deduction for purchase of Montana-produced organic or inorganic fertilizer.

Part 4 — Wind-Generated Electricity

15-32-401. Purpose and statement of policy.
15-32-402. Commercial or net metering system investment credit — alternative energy systems.
15-32-403. Limitation on credit.
15-32-404. Carryover of credit.
15-32-405. Exclusion from other tax incentives.
15-32-406. Separation of credit portion.
15-32-407. Rules authorized.

Part 5 — Mineral and Coal Exploration Incentives

15-32-501. Purpose and statement of policy.

15-32-502. Definitions.
15-32-503. Exploration incentive credit.
15-32-504. Procedure for requesting and certifying credit.
15-32-505. Application of credit.
15-32-506. Credit carryover.
15-32-507. Credit limitation.
15-32-508. Credit assignment.
15-32-509. Record of credit use.
15-32-510. Deduction for donation of exploration information.

Part 6 — Recycling of Material

15-32-601. Definitions.
15-32-602. Amount and duration of credit — how claimed.
15-32-603. Credit for investment in property used to collect or process reclaimable material or to manufacture a product from reclaimed material.
15-32-604. Limitation of credit.
15-32-605 through 15-32-608 reserved.
15-32-609. Recycled material qualifying for deduction — purpose — rulemaking.
15-32-610. Deduction for purchase of recycled material.
15-32-611. Department to make rules.

Chapter Cross-References

Property tax exemption for capital investment in recognized nonfossil form of energy generation, 15-6-201.

Part 1
Investment in Energy Conservation or Alternative Energy

15-32-101. Purpose. The purpose of this part is to encourage the use of alternative energy sources and the conservation of energy through incentive programs. Such incentives are to be made available to the energy user on a basis which requires him to take the initiative in obtaining a particular incentive. This part allows but does not require a public utility to extend credit for energy conservation investments.

History: En. 84-7401 by Sec. 1, Ch. 548, L. 1975; amd. Sec. 7, Ch. 576, L. 1977; R.C.M. 1947, 84-7401.

15-32-102. Definitions. As used in this part, the following definitions apply:

(1) "Alternative energy system" means the generation system or equipment used to convert energy sources into usable sources using fuel cells that do not require hydrocarbon fuel, geothermal systems, low emission wood or biomass, wind, photovoltaics, geothermal, small hydropower plants under 1 megawatt, and other recognized nonfossil forms of energy generation.

(2) "Building" means:

(a) a single or multiple dwelling, including a mobile home or manufactured home; or

(b) a building used for commercial, industrial, or agricultural purposes that is enclosed with walls and a roof.

(3) "Capital investment" means any material or equipment purchased and installed in a building or land with or without improvements.

(4) "Energy conservation purpose" means one or both of the following results of an investment:

(a) reducing the waste or dissipation of energy; or

(b) reducing the amount of energy required to accomplish a given quantity of work.

(5) "Geothermal system" means a system that transfers energy either from the ground, by way of a closed loop, or from ground water, by way of an open loop, for the purpose of heating or cooling a residential building.

(6) "Low emission wood or biomass combustion device" means a noncatalytic stove or furnace that:

(a) (i) is specifically designed to burn wood pellets or other nonfossil biomass pellets; and

(ii) has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203; or

(iii) has an air-to-fuel ratio of 35 to 1 or greater when tested in conformance with the standard method for measuring the air-to-fuel ratio and minimum achievable burn rates for wood-fired appliances, as adopted by the department of environmental quality pursuant to 15-32-203; or

(b) burns wood or other nonfossil biomass and has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203.

(7) "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.

(8) "Recognized nonfossil forms of energy generation" means:

(a) a system that captures energy or converts energy sources into usable sources, including electricity, by using:

(i) solar energy, including passive solar systems;

(ii) wind;

(iii) solid waste;

(iv) the decomposition of organic wastes;

(v) geothermal;

(vi) fuel cells that do not require hydrocarbon fuel; or

(vii) an alternative energy system;

(b) a system that produces electric power from biomass or solid wood wastes; or

(c) a small system that uses water power by means of an impoundment that is not over 20 acres in surface area.

History: En. 84-7402 by Sec. 2, Ch. 548, L. 1975; R.C.M. 1947, 84-7402; amd. Sec. 1, Ch. 652, L. 1979; amd. Sec. 1, Ch. 513, L. 1985; amd. Sec. 16, Ch. 83, L. 1989; amd. Sec. 2, Ch. 467, L. 1991; amd. Sec. 1, Ch. 646, L. 1991; amd. Sec. 41, Ch. 418, L. 1995; amd. Sec. 74, Ch. 42, L. 1997; amd. Sec. 20, Ch. 200, L. 1997; amd. Sec. 9, Ch. 591, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 591 inserted definition of alternative energy system; in definition of recognized nonfossil forms of energy generation in (a) after "sources" inserted "including electricity", inserted (a)(v) through (a)(vii) concerning geothermal energy, fuel cells, and alternative energy systems, and in (b) after "from" inserted "biomass or"; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 30, Ch. 591, L. 2001, provided: "[Sections 6 through 12 and 14] [15-6-225, 15-24-1401, 15-31-124, 15-32-102, 15-32-109, 15-32-115, 15-32-201, and 15-32-402] apply to tax years beginning after December 31, 2001."

15-32-103. Deduction for energy-conserving investments. (1) In addition to all other deductions from gross corporate income allowed in computing net income under chapter 31, part 1, a taxpayer may deduct a portion of his expenditure for a capital investment in a building for an energy conservation purpose, in accordance with the following schedule:

If the installation or investment is made in a residential building:	If the installation or investment is made in a building not used as a residence:
100% of first $1,000 expended	100% of first $2,000 expended
50% of next $1,000 expended	50% of next $2,000 expended
20% of next $1,000 expended	20% of next $2,000 expended
10% of next $1,000 expended	10% of next $2,000 expended

(2) This tax treatment is subject to approval of the department as provided in 15-32-106 and may not be claimed for so much of the expenditure and capital investment as is financed by a state, federal, or private grant for energy conservation.

History: **En. 84-7403 by Sec. 3, Ch. 548, L. 1975; amd. Sec. 1, Ch. 576, L. 1977; R.C.M. 1947, 84-7403; amd. Sec. 5, Ch. 480, L. 1981; amd. Sec. 1, Ch. 133, L. 1989.**

15-32-104. Limitations on deduction and credit. Tax treatment under 15-32-103 and 15-32-109 is limited to:

(1) capital investments made after January 1, 1975;

(2) persons and firms not primarily engaged in the provision of gas or electricity derived from fossil fuel extraction or conventional hydroelectric development; and

(3) a ceiling of $100,000 in tax savings per year to any one person or firm.

History: **En. 84-7406 by Sec. 6, Ch. 548, L. 1975; R.C.M. 1947, 84-7406; amd. Sec. 6, Ch. 480, L. 1981.**

15-32-105. Application to new construction — rules. (1) It is the intent of the legislature that no deduction or credit under this part be allowed for capital investment for an energy conservation practice in the new construction of a building if that capital investment would have been made under established standards of new construction. The department of revenue shall adopt rules to implement this legislative intent. Such rules shall be based on the best currently available methods of analysis, including those of the national bureau of standards, the department of housing and urban development, and other federal agencies and professional societies and materials developed by the department. Provisions shall be made for an annual updating of rules and standards as required.

(2) The department may adopt rules to define standard components of conventional buildings and to establish other necessary elements of the definition of passive solar system consistent with the intent of 15-32-102.

History: **En. Sec. 6, Ch. 576, L. 1977; amd. Sec. 7, Ch. 480, L. 1981.**

15-32-106. Procedure for obtaining benefit of deduction or credit. The department of revenue shall provide forms on which a taxpayer may apply for a tax credit under 15-32-109. The department of revenue shall approve a deduction or credit under 15-32-103 or 15-32-109 that demonstrably promotes energy conservation or uses a recognized nonfossil form of energy generation. The department of revenue may refer a deduction or credit involving energy generation to the department of environmental quality for its advice, and the department of environmental quality shall respond within 60 days. The department of revenue may refer a deduction or credit involving energy conservation to the department of administration for its advice, and the department of administration shall respond within 60 days. The department of revenue may deny a deduction or credit that it finds to be impractical or ineffective.

History: **En. 84-7404 by Sec. 4, Ch. 548, L. 1975; R.C.M. 1947, 84-7404; amd. Sec. 8, Ch. 480, L. 1981; amd. Sec. 2, Ch. 133, L. 1989; amd. Sec. 42, Ch. 418, L. 1995.**

15-32-107. Loans by utilities and financial institutions — tax credit for interest differential for loans made prior to July 1, 1995. (1) Except as provided in subsection (4), a public utility or a financial institution that lent money or made qualifying installations under this section as it read prior to July 1, 1995, may compute the difference between interest it actually receives on the transactions and the interest that would have been received at the prevailing average interest rate for home improvement loans, as prescribed in rules made by the public service commission. The utility may apply the difference so computed as a credit against its tax liability for the electrical energy producer's license tax under 15-51-101 or for the corporation license tax under chapter 31, part 1. The public service commission shall regulate rates in such a manner that a utility making loans under this section may not make a profit as the result of this section. The financial institution may apply the difference so computed as a credit against its tax liability for the corporation license tax under chapter 31, part 1.

(2) A utility may not claim a tax credit under this section exceeding $750,000 in any tax year. A financial institution may not claim a tax credit under this section exceeding $2,000 in any tax year.

(3) The public service commission may make rules to implement this section as it applies to public utilities only.

(4) A public utility whose purchases of or investments in conservation are placed in the rate base as provided in Title 69, chapter 3, part 7, may not receive a tax credit under subsection (1).

History: En. 84-7405 by Sec. 5, Ch. 548, L. 1975; R.C.M. 1947, 84-7405; amd. Sec. 1, Ch. 666, L. 1979; amd. Sec. 1, Ch. 266, L. 1981; amd. Sec. 7, Ch. 610, L. 1983; amd. Sec. 1, Ch. 331, L. 1987; amd. Sec. 1, Ch. 535, L. 1993.

15-32-108. Extension of existing classifications. Any classification of property under the provisions of section 3, Chapter 548, Laws of 1975, that existed prior to January 1, 1977, approved by the department of revenue before April 19, 1977, shall continue in effect until December 31, 1982. On January 1, 1983, the taxable percentage of such property shall be determined under chapter 6, part 1, or that part as it may be recodified or amended.

History: En. Sec. 9, Ch. 576, L. 1977; R.C.M. 1947, 84-7403.1; amd. Sec. 26, Ch. 581, L. 1979.

15-32-109. Credit for energy-conserving expenditures. (1) Subject to the restrictions of subsections (2) and (3), a resident individual taxpayer may take a credit against the taxpayer's tax liability under chapter 30 for 25% of the taxpayer's expenditure for a capital investment in the physical attributes of a building or the installation of a water, heating, or cooling system in the building, so long as either type of investment is for an energy conservation purpose, in an amount not to exceed $500.

(2) The credit or the sum of the credits under subsection (1):

(a) may not exceed the taxpayer's tax liability; and

(b) is subject to the provisions of 15-32-104.

(3) The credit allowed under this section may be used as a carryforward against taxes imposed under chapter 30 for the 7 succeeding tax years. The entire amount of the credit not used in the year that it was earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

History: En. Sec. 1, Ch. 480, L. 1981; amd. Sec. 10, Ch. 591, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 591 in (1) at end substituted "for 25% of the taxpayer's expenditure for a capital investment in the physical attributes of a building or the installation of a water, heating, or cooling system in the building, so long as either type of investment is for an energy conservation purpose in an amount not to exceed $500" for "a portion of his expenditure for a capital investment in a building for an energy conservation purpose, determined as follows:

(a) in the case of an expenditure for a residential building, the lesser of:

(i) $150; or

(ii) 5% of the expenditure; and

(b) in the case of an expenditure for a building not used as a residence, the lesser of:

(i) $300; or

(ii) 5% of the expenditure"; and substituted (3) concerning carryforward of credit for "There is no carryback or carry-forward of the credit permitted under this section, and the credit must be applied in the year the expenditure is incurred, as determined by the taxpayer's accounting method." Amendment effective July 1, 2001.

Applicability: Section 30, Ch. 591, L. 2001, provided: "[Sections 6 through 12 and 14] [15-6-225, 15-24-1401, 15-31-124, 15-32-102, 15-32-109, 15-32-115, 15-32-201, and 15-32-402] apply to tax years beginning after December 31, 2001."

15-32-110 through 15-32-114 reserved.

15-32-115. Credit for geothermal system — to whom available — eligible costs — limitations. (1) A resident individual taxpayer who completes installation of a geothermal system, as defined in 15-32-102, in the taxpayer's principal dwelling is entitled to claim a tax credit, as provided in subsection (3), against the taxpayer's tax liability under chapter 30 for a portion of the installation costs of the system, not to exceed $1,500. The amount of the credit not used in the year in which the installation is made may be carried forward against taxes imposed under chapter 30 for the 7 succeeding tax years. The entire amount of the credit not used in the year that it was earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(2) For the purposes of this section, installation costs include the cost of:

(a) trenching, well drilling, casing, and downhole heat exchangers;

(b) piping, control devices, and pumps that move heat from the earth to heat or cool the building;

(c) ground source or ground coupled heat pumps;

(d) liquid-to-air heat exchanger, ductwork, and fans installed with a ground heat well that pump heat from a well into a building; and

(e) design and labor.

History: En. Sec. 2, Ch. 646, L. 1991; amd. Sec. 11, Ch. 591, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 591 in (1) at end of first sentence substituted "not to exceed $1,500" for "up to $250 per year for 4 years" and substituted second and third sentences concerning carryforward of credit and year of application of credit for "The credit may not exceed the taxpayer's income tax liability for the taxable year in which the credit is claimed"; and deleted former (3) that read: "(3) The tax credit allowed under this section is deductible from the taxpayer's income tax liability for the taxable year in which the installation costs were incurred and for the next 3 taxable years succeeding the taxable year in which the installation costs were incurred. There is no carryback or carryforward of the credit permitted under this section." Amendment effective July 1, 2001.

Applicability: Section 30, Ch. 591, L. 2001, provided: "[Sections 6 through 12 and 14] [15-6-225, 15-24-1401, 15-31-124, 15-32-102, 15-32-109, 15-32-115, 15-32-201, and 15-32-402] apply to tax years beginning after December 31, 2001."

Part 2
Tax Credit for Installing Alternative Energy System

15-32-201. Amount of credit — to whom available. (1) A resident individual taxpayer who completes installation of an energy system using a recognized nonfossil form of energy generation, as defined in 15-32-102, in the taxpayer's principal dwelling after December 31, 2001, is entitled to claim a tax credit in an amount equal to the cost of the system, including installation costs, less grants received, not to exceed $500, against the income tax liability imposed against the taxpayer pursuant to chapter 30.

(2) A resident individual taxpayer who completes installation of an energy system using a low emission wood or biomass combustion device, as defined in 15-32-102, in the taxpayer's principal dwelling after December 31, 2001, is entitled to claim a tax credit in an amount equal to the cost of the system, including the installation costs, not to exceed $500, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30.

History: En. 84-7414 by Sec. 1, Ch. 574, L. 1977; R.C.M. 1947, 84-7414(1); amd. Sec. 1, Ch. 480, L. 1983; amd. Sec. 2, Ch. 513, L. 1985; amd. Sec. 3, Ch. 467, L. 1991; amd. Sec. 27, Ch. 10, L. 1993; amd. Sec. 75, Ch. 42, L. 1997; amd. Sec. 12, Ch. 591, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 591 in (1) near middle after "dwelling" substituted "after December 31, 2001, is entitled to claim a tax credit in an amount equal to the cost of the system, including installation costs, less grants received, not to exceed $500" for "prior to January 1, 1993, or who acquires title to a dwelling prior to January 1, 1993, that is to be used as the taxpayer's principal dwelling and is equipped with an energy system for which the credit allowed by this part has never been claimed is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of the system, including installation costs, less grants received or, if the federal government provides for a tax credit substantially similar in kind (not in amount), then a tax credit in an amount equal to 5% of the first $1,000 and 2 1/2% of the next $3,000 of the cost of the system, including installation costs, less grants received"; in (2) near beginning substituted reference to 15-32-102 for reference to 15-32-102(5)(a), after "dwelling" substituted "after December 31, 2001" for "prior to January 1, 1996", and near middle substituted "equal to the cost of the system, including the installation costs, not to exceed $500" for "equal to 20% of the first $1,000 and 10% of the next $3,000 of the cost of the system, including the installation costs"; and deleted former (3) that read: "(3) A resident individual taxpayer who completes installation of an energy system that uses a low emission wood or biomass combustion device, as defined in 15-32-102(5)(b), in the taxpayer's principal dwelling prior to January 1, 1996, is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of the system, including the installation costs, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30." Amendment effective July 1, 2001.

Applicability: Section 30, Ch. 591, L. 2001, provided: "[Sections 6 through 12 and 14] [15-6-225, 15-24-1401, 15-31-124, 15-32-102, 15-32-109, 15-32-115, 15-32-201, and 15-32-402] apply to tax years beginning after December 31, 2001."

15-32-202. Taxable years in which credit may be claimed — carryover. The tax credit is to be deducted from the taxpayer's income tax liability for the taxable year in which the energy system was acquired by the taxpayer. If the amount of the tax credit exceeds the taxpayer's income tax liability for the taxable year, the amount which exceeds the tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability. Notwithstanding the foregoing provision, no tax credit may be carried over for deduction after the fourth taxable year succeeding the taxable year in which the energy system was acquired.

History: En. 84-7414 by Sec. 1, Ch. 574, L. 1977; R.C.M. 1947, 84-7414(2).

15-32-203. Department to make rules. (1) The department of revenue shall prescribe rules necessary to carry out the purposes of this part.

(2) The department of environmental quality shall adopt rules establishing emission testing and emission certification standards for low emission wood or biomass combustion devices and shall maintain a list of the devices that are certified.

History: En. 84-7415 by Sec. 3, Ch. 574, L. 1977; R.C.M. 1947, 84-7415; amd. Sec. 3, Ch. 513, L. 1985; amd. Sec. 43, Ch. 418, L. 1995.

Part 3

Tax Deduction for Purchasing Montana-Produced Organic Fertilizer and Inorganic Fertilizer Produced as Byproduct

15-32-301. Purpose. The purpose of this part is to promote the use of organic matter produced by Montana industries and municipalities and inorganic matter produced as byproducts of industrial or mining activity to revitalize Montana lands and to assist in making organic fertilizer and inorganic fertilizer produced as a byproduct economically competitive with commercially produced inorganic fertilizer.

History: En. Sec. 1, Ch. 533, L. 1981; amd. Sec. 2, Ch. 218, L. 1997.

15-32-302. Definitions. As used in this part, the following definitions apply:

(1) "Inorganic fertilizer produced as a byproduct" means enriched mine tailings, kiln dust, and reject rock that have been processed for use in increasing soil condition and fertility and includes soil amendments as that term is defined in 80-10-101.

(2) "Organic fertilizer" means raw organic matter that has been processed and aged for use in increasing soil condition and fertility and includes soil amendments as that term is defined in 80-10-101.

(3) "Raw organic matter" means unprocessed plant or animal waste products.

History: En. Sec. 2, Ch. 533, L. 1981; amd. Sec. 3, Ch. 218, L. 1997.

15-32-303. Deduction for purchase of Montana-produced organic or inorganic fertilizer. In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct expenditures for organic fertilizer and inorganic fertilizer produced as a byproduct produced in Montana and used in Montana if the expenditure was not otherwise deducted in computing taxable income.

History: En. Sec. 3, Ch. 533, L. 1981; amd. Sec. 18, Ch. 634, L. 1993 (voided by I.R. No. 112, Nov. 8, 1994); amd. Sec. 4, Ch. 218, L. 1997.

Part 4

Wind-Generated Electricity

15-32-401. Purpose and statement of policy. The purpose of this part is to encourage the development of the alternative energy industry in Montana without adversely affecting tax revenue received from existing economic activity in the state. Because of the alternative energy potential within the state, it is desirable to encourage alternative energy generation for the purpose of attracting alternative energy manufacturing industries to the state. It is also desirable for new or expanded industry to secure alternatively generated electricity on a direct contract sales basis without adversely affecting rates charged to other electricity users. Sound fiscal policy requires that encouragement be given to an alternative energy industry without subtracting from existing sources of revenue to the state.

History: En. Sec. 1, Ch. 648, L. 1983; amd. Sec. 13, Ch. 591, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 591 in five places substituted reference to alternative energy for reference to wind energy; in third sentence after "secure" substituted "alternatively generated" for "wind-generated"; and made minor changes in style. Amendment effective July 1, 2001.

15-32-402. Commercial or net metering system investment credit — alternative energy systems. (1) An individual, corporation, partnership, or small business corporation as defined in 15-30-1101 that makes an investment of $5,000 or more in certain depreciable property qualifying under section 38 of the Internal Revenue Code of 1954, as amended, for a commercial system or a net metering system, as defined in 69-8-103, that is located in Montana and that generates energy by means of an alternative renewable energy source, as defined in 90-4-102, is entitled to a tax credit against taxes imposed by 15-30-103 or 15-31-121 in an amount equal to 35% of the eligible costs, to be taken as a credit only against taxes due as a consequence of taxable or net income produced by one of the following:

(a) manufacturing plants located in Montana that produce alternative energy generating equipment;

(b) a new business facility or the expanded portion of an existing business facility for which the alternative energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or

(c) the alternative energy generating equipment in which the investment for which a credit is being claimed was made.

(2) For purposes of determining the amount of the tax credit that may be claimed under subsection (1), eligible costs include only those expenditures that qualify under section 38 of the Internal Revenue Code of 1954, as amended, and that are associated with the purchase, installation, or upgrading of:

(a) generating equipment;

(b) safety devices and storage components;

(c) transmission lines necessary to connect with existing transmission facilities; and

(d) transmission lines necessary to connect directly to the purchaser of the electricity when no other transmission facilities are available.

(3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by the state or federal government for the system.

History: En. Sec. 2, Ch. 648, L. 1983; amd. Sec. 14, Ch. 591, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 591 in (1) near middle after "commercial system" substituted "or a net metering system, as defined in 69-8-103, that is located in Montana and that generates energy by means of an alternative renewable energy source, as defined in 90-4-102" for "located in Montana which generates electricity by means of wind power"; and in (1)(a), (1)(b), and (1)(c) substituted "alternative energy" for "wind energy". Amendment effective July 1, 2001.

Applicability: Section 30, Ch. 591, L. 2001, provided: "[Sections 6 through 12 and 14] [15-6-225, 15-24-1401, 15-31-124, 15-32-102, 15-32-109, 15-32-115, 15-32-201, and 15-32-402] apply to tax years beginning after December 31, 2001."

15-32-403. Limitation on credit. (1) Except as provided in subsection (2), whenever any federal wind energy tax credits for a system that generates electricity by means of wind power are allowed or allowable under section 48(a) of the Internal Revenue Code (26 U.S.C. 48(a)) or any other federal law, the state credit allowed by 15-32-402 must be reduced by the amount of federal credits so that the effective credit does not exceed 60% of the eligible costs.

(2) An individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, is exempt from the provisions of subsection (1) of this section if the individual, corporation, partnership, or small business corporation:

(a) (i) invests in a commercial system located within the exterior boundaries of a Montana Indian reservation, which commercial system is 5 megawatts or larger in size;

(ii) signs an employment agreement with the tribal government of the reservation where the commercial system would be constructed regarding the training and employment of tribal members in the construction, operation, and maintenance of the commercial system; and

(iii) offers contracts with a duration of at least 5 years to sell at least 33% of that commercial system's net generating output at the cost of production plus a reasonable rate of return as designated by the public service commission to customers for use within the state of Montana; or

(b) (i) invests in a commercial system located on state trust land;

(ii) signs a lease agreement with the state to make annual lease payments to the permanent school trust fund; and

(iii) offers contracts with a duration of at least 5 years to sell at least 33% of that commercial system's net generating output at the cost of production plus a rate of return not to exceed 12%.

(3) The cost of production must be determined by dividing the cost and operation of the commercial system over an appropriate time period by the kilowatt-hour output of the system.

History: En. Sec. 3, Ch. 648, L. 1983; amd. Sec. 76, Ch. 42, L. 1997; amd. Sec. 1, Ch. 541, L. 2001; amd. Sec. 15, Ch. 591, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 541 in (1) at beginning inserted exception clause; inserted (2) and (2)(a) concerning criteria for exemption from subsection (1) if located within an Indian reservation; inserted (3) providing a formula for establishing the cost of production; and made minor changes in style. Amendment effective January 1, 2002.

Chapter 591 at beginning of (1) inserted exception clause; inserted (2) and (2)(b) concerning criteria for exemption from subsection (1) if located on state trust land; inserted (3) concerning calculation of cost of production; and made minor changes in style. Amendment effective July 1, 2001.

15-32-404. Carryover of credit. (1) The tax credit allowed under 15-32-402 is to be deducted from that portion of the taxpayer's tax liability as set forth in 15-32-402(1) for the tax year in which the equipment invested in by the taxpayer is placed in service. If the amount of the tax credit exceeds the taxpayer's tax liability for the tax year, the amount that exceeds the tax liability may be carried over for credit against the taxpayer's tax liability in the next succeeding tax year or years until the total amount of the tax credit, subject to the limitation of 15-32-403, has been deducted from tax liability. However, except as provided in subsection (2), a credit may not be carried beyond the seventh tax year succeeding the tax year in which the equipment was placed in service.

(2) A credit may be extended through the 15th tax year succeeding the tax year in which the equipment was placed in service if an individual, corporation, partnership, or small business corporation, as defined in 15-30-1101:

(a) invests in a commercial system located within the exterior boundaries of a Montana Indian reservation, which commercial system is 5 megawatts or larger in size; and

(b) signs an employment agreement with the tribal government of the reservation where the commercial system would be constructed regarding the training and employment of tribal members in the construction, operation, and maintenance of the commercial system.

History: En. Sec. 4, Ch. 648, L. 1983; amd. Sec. 2, Ch. 541, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 541 in (1) at beginning of third sentence inserted exception clause; inserted (2) allowing extension of a tax credit through the 15th year under certain circumstances; and made minor changes in style. Amendment effective January 1, 2002.

15-32-405. Exclusion from other tax incentives. If a credit is claimed for an investment pursuant to this part, no other state energy or investment tax credit, including but not limited to the tax credits allowed by 15-30-162 and 15-31-123 through 15-31-125, may be claimed for the investment. Property tax reduction allowed by 15-6-201(3) may not be applied to a facility for which a credit is claimed pursuant to this part.

History: En. Sec. 5, Ch. 648, L. 1983; amd. Sec. 8, Ch. 648, L. 1983.

15-32-406. Separation of credit portion. In the case of a business, a portion of which qualifies for the credit pursuant to 15-32-402 and a portion of which does not qualify for the credit, taxes due from each portion must be separated by using the three-factor formula provided in 15-31-305.

History: En. Sec. 6, Ch. 648, L. 1983.

15-32-407. Rules authorized. The department of revenue is authorized to adopt rules to implement this part. The purpose of such rules must be to insure the following:

(1) proper and efficient administration of this part;

(2) proper reporting of information and payment of any amounts due by persons claiming the credit pursuant to this part;

(3) the claiming of the credit only against taxes due as a consequence of income produced by new economic activity in the state as described in 15-32-402.

History: **En. Sec. 7, Ch. 648, L. 1983.**

Part 5
Mineral and Coal Exploration Incentives

15-32-501. Purpose and statement of policy. The legislature recognizes the critical importance of mineral development to the vitality of Montana's economy and the state's revenue base. The legislature also recognizes that there has been a decline in mineral exploration throughout the state. The purpose of this part is to encourage mineral exploration in Montana without adversely affecting tax revenue received from existing economic activity in the state.

History: **En. Sec. 1, Ch. 538, L. 1999.**

15-32-502. Definitions. For purposes of this part, the following definitions apply:

(1) (a) "Certified expenditures" means those costs incurred for activities in direct support of exploration activity conducted at a specific exploration site for the purpose of determining the existence, location, extent, or quality of a mineral or coal deposit. The term includes:

(i) the costs of obtaining the approvals, permits, licenses, and certificates for an exploration activity referred to in 15-32-503;

(ii) direct labor costs and the cost of benefits for employees directly associated with work described in 15-32-503;

(iii) the cost of renting or leasing equipment from parties not affiliated with the person requesting and taking the credit;

(iv) the reasonable costs of owning, maintaining, and operating equipment;

(v) insurance and bond premiums associated with the activities set out in subsections (1)(a)(i) through (1)(a)(vii);

(vi) payments to consultants and independent contractors; or

(vii) the general expense of operating the person's business, including the costs of materials and supplies, if those expenses and costs are directly attributable to the work described in 15-32-503.

(b) The term does not include return on investment, insurance or bond premiums not covered under subsection (1)(a)(v), or any other expense that the person has not incurred to complete work described in 15-32-503.

(2) "Credit" means the exploration incentive credit for activities involving mineral and coal deposits authorized by this part.

(3) "Exploration activity data list" means, as applicable, a summary of work completed during the year that includes but is not limited to:

(a) the number of core or rotary drilling holes completed;

(b) chemical analytical data available; or

(c) aerial photographs or a topographic or geologic map showing the location of the drill holes, sample locations, or the other exploration activities undertaken.

(4) "Geochemical methods" means geochemical data gathering methods, including the collection of soil, rock, water, air, vegetation, and similar samples and their chemical analyses.

(5) "Geophysical methods" means all geophysical data gathering methods used in mineral or coal exploration, including seismic, gravity, magnetic, radiometric, radar, and electromagnetic and other remote sensing measurements.

(6) "Mineral" means those substances defined as minerals by 82-4-303 and coal as defined by 82-1-111.

(7) (a) "Mining operation" includes all operating and nonoperating activities related to a mineral deposit interest and may be composed of one or more mining properties.

(b) In determining whether mining properties are part of the same mining operation, the department may consider whether the operation, in conducting mining activities on several mining properties, uses common personnel, supply and maintenance facilities, mining-related treatment processes, storage facilities, roads, pipelines, transportation equipment, and mining techniques and technology and may also consider the extent to which the mineral deposit interest comprises a common mining property.

(8) "Person" means a sole proprietorship, corporation, partnership, small business corporation as defined in 15-30-1101, or limited liability company as defined in 35-8-102.

(9) "Tax year" means the calendar year.

History: En. Sec. 2, Ch. 538, L. 1999.

15-32-503. Exploration incentive credit. (1) The department shall grant to a person a credit against the person's tax liability under Title 15, chapter 30 or 31, for the certified expenditures of each of the following exploration activities that are performed on land in the state for the purpose of determining the existence, location, extent, or quality of a mineral or coal deposit, regardless of land ownership:

(a) surveying by geophysical or geochemical methods;

(b) drilling exploration holes;

(c) conducting underground exploration;

(d) surface trenching and bulk sampling; or

(e) performing other exploratory work, including aerial photographs, geological and geophysical logging, sample analysis, and metallurgical testing.

(2) (a) Except as provided in subsection (3), credit may not be granted under subsection (1) for exploration activity described in subsection (1) that occurs after the construction commencement date of a new mine.

(b) For the purposes of this subsection (2), "construction commencement date of a new mine" means the date no later than which all of the following have occurred:

(i) there has been issued to the owner or an agent of the owner permits, leases, title and other rights in land, and other approvals, permits, licenses, and certificates by federal, state, and local agencies that a reasonable and prudent person would consider adequate to commence construction of a mine in the expectation that all other approvals, permits, licenses, and certificates necessary for the completion of the facilities will be obtained;

(ii) all approvals, permits, licenses, and certificates are in full force and effect and without any modification that might jeopardize the completion or continued construction of the mine; and

(iii) an order, judgment, decree, determination, or award of a court or administrative or regulatory agency enjoining, either temporarily or permanently, the construction or the continuation of construction of the mine is not in effect.

(3) In addition to the grant of a credit for a new mine under subsection (2), a credit may be granted under subsection (1) for exploration activity for a mine that had previously operated, that has ceased to operate, and for which all previous mining approvals, permits, licenses, and certificates that allowed the previous operation are no longer in effect. However, a credit may not be granted under subsection (1) for exploration activity that occurs after the mine reopening date. For the purposes of this subsection (3), "mine reopening date" means the date not later than which all of the following have occurred:

(a) there has been issued to the owner or an agent of the owner permits, leases, title and other rights in land, and other approvals, permits, licenses, and certificates by federal, state, and local agencies that a reasonable and prudent person would consider adequate to commence operation of the former mine in the expectation that all other approvals, permits, licenses, and certificates necessary for the completion of the facilities will be obtained;

(b) all approvals, permits, licenses, and certificates for the reopened mine are in full force and effect and without any modification that might jeopardize the reopening of the former mine; and

(c) an order, judgment, decree, determination, or award of a court or administrative or regulatory agency enjoining, either temporarily or permanently, the reopening of the former mine is not in effect.

History: En. Sec. 3, Ch. 538, L. 1999.

15-32-504. Procedure for requesting and certifying credit. To obtain the credit authorized by this part, a person shall submit a request to the department for the credit as follows:

(1) On a form provided by the department, the person shall submit the request and a statement of expenditures for the previous calendar year not later than 60 days after the close of that calendar year.

(2) The request must:

(a) describe the work accomplished during the previous year, the number of employees, and the names and number of consultants; and

(b) provide a detailed list or ledger of expenditures related to the accomplishments described in subsection (2)(a) and an exploration activity data list.

(3) The person submitting the request is not required to transmit copies of receipts with the request, but the statement of expenditures is subject to audit at the discretion of the department.

(4) If the department decides to audit the statement of expenditures, the department may require the person submitting the request to justify claims of expenditures with receipts and other reliable information.

(5) The department shall respond to the request by September 30 by certifying or not certifying the person's expenditures. If the department does not certify expenditures, the department shall state the reasons for denial of certification and give the person making the request an opportunity to correct any deficiencies or to provide additional information. If the department certifies expenditures, the department shall specify the exploration activity data list requirements for that year that must be presented to the department at the time of the taking of the credit.

(6) If the department neither certifies nor denies certification of expenditures by September 30, the expenditures are certified as submitted.

History: En. Sec. 4, Ch. 538, L. 1999.

15-32-505. Application of credit. (1) In a tax year, a person may take a credit that was approved under 15-32-504 against taxes payable by the person. The credit may not exceed 50% of the person's tax liability under either Title 15, chapter 30 or 31, for the tax year that is related to production from the mining operation at which the exploration activities occurred.

(2) If a person applies the credit against the person's tax liability under subsection (1), the department shall disallow application of the credit under that provision unless the person files with the person's tax return an accounting of the person's exploration activities for each mining operation that is included in the tax return and as to which the credit is being applied. The accounting of exploration activities required by this subsection must be made on a form prescribed by the department. On the form, the person shall:

(a) identify the mining operations for which the credit is claimed; and

(b) set out the gross income attributable to the mining operations and other information about the mining operations that the department may require.

(3) A person may not apply the credit under this section if the application, when added to credits previously applied under this section, would exceed the total amount of the credits approved under 15-32-504.

History: En. Sec. 5, Ch. 538, L. 1999.

15-32-506. Credit carryover. Except as its application is limited by 15-32-505 and 15-32-507, a portion of a credit that is not applied under 15-32-505 during a tax year may be carried forward to and applied during a subsequent tax year.

History: En. Sec. 6, Ch. 538, L. 1999.

15-32-507. Credit limitation. A credit for a specific exploration activity may not exceed $20 million and accrues at the rate of 50% of the certified expenditures each year. The credit must be applied within 15 tax years after the taking of the credit is approved under 15-32-504. However, the tax year or years in which the credit is applied need not be:

(1) the tax year in which the person first incurs liability for payment of tax based on the person's activity that is the basis of the claim for the credit; or

(2) consecutive tax years.

History: En. Sec. 7, Ch. 538, L. 1999.

15-32-508. Credit assignment. A person may assign a credit to the person's successor in interest for the mining operation at which the exploration activities occur, but only if the successor in interest is a person qualified to obtain the credit under 15-32-503. A credit may not be assigned except as permitted in this section.

History: En. Sec. 8, Ch. 538, L. 1999.

15-32-509. Record of credit use. For each mining operation, the department may require a person who submits a request to take the credit under 15-32-504 to provide with the request a record of:

(1) the person's past use of credits taken under 15-32-504 and 15-32-505; and

(2) other information that the department requires to determine if approval of the taking of the credit by the person would exceed the limits on use of the credit under this part.

History: En. Sec. 9, Ch. 538, L. 1999.

15-32-510. Deduction for donation of exploration information. (1) In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct documented expenses for the donation of mineral exploration information generated as part of the certified expenditures. The information must be donated to the Montana tech foundation to reside as part of the Montana tech research library, and the documented expenses must be based on the cost of recreating the donated information.

(2) The Montana tech foundation has the right to limit information accepted and deductions granted to that exploration activity data that is needed as part of the Montana tech research library.

(3) A deduction under this section may not exceed 20% of the actual value of the data if a tax credit for the same exploration activity data is taken under this part.

History: En. Sec. 10, Ch. 538, L. 1999.

Part 6
Recycling of Material

15-32-601. *(Temporary)* **Definitions.** For the purposes of this part, unless otherwise required by the context, the following definitions apply:

(1) "Collect" means the collection and delivery of reclaimable materials to a recycling or reclaimable materials processing facility.

(2) "Postconsumer material" means a product or packaging material that has served its final intended use, that has been discarded by an individual, commercial enterprise, or other entity after having fulfilled its intended application or use, and that is usually thrown away and hauled to landfills. This term does not include wastes generated during production of an end product.

(3) "Process" includes but is not limited to the treatment of hazardous wastes as defined in 75-10-403.

(4) (a) "Reclaimable material" means material that has useful physical or chemical properties after serving a specific purpose and that would normally be disposed of as solid waste, as defined in 75-10-203, by a consumer, processor, or manufacturer.

(b) Except for claiming a tax credit as provided in 15-32-603(1)(d), material may not be considered reclaimed by the consumer, processor, or manufacturer that generated the material.

(5) "Recycled material" means a substance that is produced from reclaimed material as provided in 15-32-609. *(Terminates December 31, 2005—secs. 5, 7, Ch. 398, L. 2001.)*

History: En. Sec. 1, Ch. 712, L. 1991; amd. Sec. 1, Ch. 568, L. 1993; amd. Sec. 1, Ch. 542, L. 1995; amd. Sec. 1, Ch. 398, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 398 deleted former (4)(a)(ii) that read: "(ii) soil that has been contaminated by hazardous wastes to the extent that treatment of those wastes is required as defined in 75-10-403"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 8, Ch. 398, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

15-32-602. *(Temporary)* **Amount and duration of credit — how claimed.** (1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for investments in depreciable property to collect or process reclaimable material or to manufacture a product from reclaimed material, if the taxpayer qualifies under 15-32-603.

(2) Subject to subsection (4), a taxpayer qualifying for a credit under 15-32-603 is entitled to claim a credit, as provided in subsection (3), for the cost of each item of property purchased to collect or process reclaimable material or to manufacture a product from reclaimed material only in the year in which the property was purchased.

(3) The amount of the credit that may be claimed under this section for investments in depreciable property is determined according to the following schedule:

(a) 25% of the cost of the property on the first $250,000 invested;

(b) 15% of the cost of the property on the next $250,000 invested; and

(c) 5% of the cost of the property on the next $500,000 invested.

(4) A credit may not be claimed for investments in depreciable property in excess of $1 million. *(Terminates December 31, 2005—secs. 5, 7, Ch. 398, L. 2001.)*

History: En. Sec. 2, Ch. 712, L. 1991; amd. Sec. 2, Ch. 542, L. 1995; amd. Sec. 2, Ch. 398, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 398 in (2) near beginning after "Subject to" deleted "15-32-603(3) and" and deleted former last sentence that read: "If qualifying property was purchased prior to January 1, 1992, but on or after January 1, 1990, a taxpayer is entitled to a credit for tax year 1992"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 8, Ch. 398, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

15-32-603. *(Temporary)* **Credit for investment in property used to collect or process reclaimable material or to manufacture a product from reclaimed material.** (1) The following requirements must be met to be entitled to a tax credit for investment in property to collect or process reclaimable material or to manufacture a product from reclaimed material:

(a) The investment must be for depreciable property used primarily to collect or process reclaimable material or to manufacture a product from reclaimed material.

(b) (i) The taxpayer claiming a credit must be a person who, as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that collects or processes reclaimable material or that manufactures a product from reclaimed material. For the purposes of this section, a business qualifies as a business that collects reclaimable material if it gathers reclaimable material for later sale or processing for another business that has as its primary business function the collection or processing of reclaimable material or the manufacture of a product from reclaimed material. The collection of reclaimable material may be a minor or nonprofit part of a business otherwise engaged in a retail trade or other business activity.

(ii) The taxpayer may but need not operate or conduct a business that collects or processes reclaimable material or manufactures a product from reclaimed material. If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (1)(b), and must have been collecting or processing reclaimable material or manufacturing a product from reclaimed material during the tax year for which the credit is claimed.

(d) The reclaimed material collected, processed, or used to manufacture a product may not be an industrial waste generated by the person claiming the tax credit unless:

(i) the person generating the waste historically has disposed of the waste onsite or in a licensed landfill; and

(ii) standard industrial practice has not generally included the reuse of the waste in the manufacturing process.

(2) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(3) A tax credit otherwise allowable under this section that is not used by the taxpayer in the taxable year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year.

(4) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(5) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in equipment necessary to collect or process reclaimable material or to manufacture a product from reclaimed material. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law. *(Terminates December 31, 2005—secs. 5, 7, Ch. 398, L. 2001.)*

History: En. Sec. 3, Ch. 712, L. 1991; amd. Sec. 3, Ch. 568, L. 1993; amd. Sec. 3, Ch. 542, L. 1995; amd. Sec. 3, Ch. 398, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 398 deleted former (2) and (3) that read: "(2) A credit for depreciable property that treats soil contaminated by hazardous wastes applies only to property that treats contaminated soil and not to auxiliary property.

(3) A credit under this section may be claimed by a taxpayer for a business only if the qualifying property is purchased before January 1, 2002"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 8, Ch. 398, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

15-32-604. *(Temporary)* **Limitation of credit.** Notwithstanding the provisions of 15-32-602 and 15-32-603, a tax credit may not be claimed for an investment in property used to produce energy from reclaimed material. *(Terminates December 31, 2005—secs. 5, 7, Ch. 398, L. 2001.)*

History: En. Sec. 4, Ch. 712, L. 1991.

15-32-605 through 15-32-608 reserved.

15-32-609. Recycled material qualifying for deduction — purpose — rulemaking. (1) The purpose of providing a tax deduction for the purchase of recycled materials is to encourage the use of goods made from reclaimed materials, especially postconsumer materials, and to discourage consumption of the same goods made from new materials. To achieve this goal, the definition of recycled material must be left to department of revenue expertise. Definitions cannot be legislatively enacted to achieve the purpose of this section because of rapid changes in technology, social awareness, and market economics. It is the intent of the legislature that the department revise, as often as it considers necessary to fulfill the purpose of this section, the definition of qualifying recycled material.

(2) The department shall by rule adopted pursuant to 15-32-611 specify recycled material that qualifies for the deduction authorized by 15-32-610. The department shall classify qualifying recycled material into different categories based upon the reclaimed material used in producing the recycled material, the ultimate use of the recycled material produced from the reclaimed material, and the amount and type of reclaimed material the recycled material must contain. In the definition of recycled material, the department may consider the point in the manufacturing and consumption cycle from which material was reclaimed and other factors contributing to precise definitions.

(3) In addition to the public participation provisions of Title 2, chapter 4, the department shall establish a register of interested persons and experts in the field of recycling. Prior to proposing an administrative rule, the department shall mail a notice to the interested persons of the department's contemplated actions, soliciting their views on possible solutions or courses of action. All proposed and adopted rules must also be mailed to the interested persons.

(4) The rules must specify the unit of measurement for classifications of recycled materials. The measurement may be based upon volume, weight, fiber content, or other applicable standard.

(5) The department shall by rule designate one or more agencies that are generally recognized in the industry to certify the contents of recycled materials.

History: En. Sec. 2, Ch. 568, L. 1993.

15-32-610. *(Temporary)* **Deduction for purchase of recycled material.** In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct an additional amount equal to 10% of the taxpayer's expenditures for the purchase of recycled material that was otherwise deductible by the taxpayer as business-related expense in Montana. *(Terminates December 31, 2005—secs. 5, 7, Ch. 398, L. 2001.)*

History: En. Sec. 5, Ch. 712, L. 1991; amd. Sec. 4, Ch. 568, L. 1993.

15-32-611. *(Temporary)* **Department to make rules.** The department of revenue shall prescribe rules necessary to carry out the purposes of this part. *(Terminates December 31, 2005—secs. 5, 7, Ch. 398, L. 2001.)*

History: En. Sec. 6, Ch. 712, L. 1991.

CHAPTER 33

SMALL BUSINESS INVESTMENT INCENTIVES

Part 1 — Small Business Investment Companies—Tax Exemptions

15-33-101. Short title.
15-33-102. Purpose.
15-33-103. Definition.
15-33-104. Reporting — recordkeeping by the department.
15-33-105. Rulemaking authority.
15-33-106. Capital gains — dividends exempted.

Part 1

Small Business Investment Companies — Tax Exemptions

15-33-101. Short title. This part may be cited as the "Small Business Investment Incentive Act".

History: En. Sec. 1, Ch. 571, L. 1981.

15-33-102. Purpose. The purpose of this part is to encourage private sector investment in venture capital firms called small business investment companies that are organized for the purpose of diversifying and strengthening employment opportunities of companies within Montana. This part, by establishing limited tax exemptions, demonstrates a recognition by the legislature that significant incentives must be offered to attract private risk capital to manufacturing, technology, technology infrastructure, power generation, agricultural, and timber product processing companies. The legislature further recognizes the necessity of tax incentives for investors in manufacturing, technology, technology infrastructure, power generation, agricultural, and timber product processing companies.

History: En. Sec. 2, Ch. 571, L. 1981; amd. Sec. 1, Ch. 523, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 523 in second and third sentences after "manufacturing" inserted "technology, technology infrastructure, power generation", in second sentence at end after "companies" deleted "when the alternative investments for private risk capital are natural resource ventures, which often yield extremely high rates of return", and in third sentence at end after "processing" substituted "companies" for "given the hardship caused many Montana communities by their reliance on an economic base dominated by single, large industries"; and made minor changes in style. Amendment effective October 1, 2001.

15-33-103. Definition. For the purposes of this part, "small business investment company" or "SBIC" means a small business investment company as defined in section 103 of the federal Small Business Investment Act of 1958, as amended.
History: **En. Sec. 3, Ch. 571, L. 1981.**

15-33-104. Reporting — recordkeeping by the department. The chairman or president of each small business investment company shall report on a form established by the department on a monthly basis the name of each investor, the amount of the investment made, and the date of investment.
History: **En. Sec. 4, Ch. 571, L. 1981.**

15-33-105. Rulemaking authority. The department of revenue may adopt rules necessary to carry out the provisions of this part.
History: **En. Sec. 5, Ch. 571, L. 1981.**

15-33-106. Capital gains — dividends exempted. Any capital gains or dividend income realized by an individual or a corporation from an investment in an SBIC organized in accordance with this part is exempt from taxation under the provisions of Title 15, chapters 30 and 31.
History: **En. Sec. 6, Ch. 571, L. 1981.**

CHAPTER 34

COAL PRODUCER'S LICENSE TAX
(Repealed)

Part 1 — General Provisions
(Repealed)

15-34-101. Repealed.
15-34-102. Repealed.
15-34-103. Repealed.
15-34-104. Repealed.
15-34-105. Repealed.
15-34-106 through 15-34-109 reserved.
15-34-110. Repealed.
15-34-111. Repealed.
15-34-112. Repealed.
15-34-113 and 15-34-114 reserved.
15-34-115. Repealed.
15-34-116. Repealed.

Part 1
General Provisions
(Repealed)

15-34-101. Repealed. Sec. 84, Ch. 7, L. 2001.
History: **En. Sec. 8, Ch. 563, L. 1999.**

15-34-102. Repealed. Sec. 84, Ch. 7, L. 2001.
History: **En. Sec. 9, Ch. 563, L. 1999.**

15-34-103. Repealed. Sec. 84, Ch. 7, L. 2001.
History: **En. Sec. 10, Ch. 563, L. 1999.**

15-34-104. Repealed. Sec. 84, Ch. 7, L. 2001.
History: **En. Sec. 7, Ch. 563, L. 1999.**

15-34-105. Repealed. Sec. 84, Ch. 7, L. 2001.
History: **En. Sec. 12, Ch. 563, L. 1999.**

15-34-106 through 15-34-109 reserved.

15-34-110. Repealed. Sec. 84, Ch. 7, L. 2001.
History: **En. Sec. 11, Ch. 563, L. 1999.**

15-34-111. Repealed. Sec. 84, Ch. 7, L. 2001.
History: En. Sec. 13, Ch. 563, L. 1999.

15-34-112. Repealed. Sec. 84, Ch. 7, L. 2001.
History: En. Sec. 14, Ch. 563, L. 1999.

15-34-113 and 15-34-114 reserved.

15-34-115. Repealed. Sec. 84, Ch. 7, L. 2001.
History: En. Sec. 16, Ch. 563, L. 1999; amd. Secs. 22, 24, Ch. 563, L. 1999.

15-34-116. Repealed. Sec. 84, Ch. 7, L. 2001.
History: En. Sec. 15, Ch. 563, L. 1999.

CHAPTER 35

COAL SEVERANCE TAX

Part 1 — General Provisions

15-35-101. Legislative findings and declarations of purpose.
15-35-102. Definitions.
15-35-103. Severance tax — rates imposed.
15-35-104. Quarterly statement and payment of tax.
15-35-105. Penalty and interest for delinquent tax — waiver.
15-35-106. Annual testing of samples.
15-35-107. When value of coal may be imputed — procedure.
15-35-108. Disposal of severance taxes.
15-35-109. Repealed.
15-35-110. Renumbered 15-35-121 by Code Commissioner, 1983.
15-35-111. Renumbered 15-35-122 by Code Commissioner, 1983.
15-35-112. Deficiency assessment — review — interest.
15-35-113. Credit for overpayment — interest on overpayment.
15-35-114. Statute of limitations.
15-35-115 through 15-35-120 reserved.
15-35-121. Penalties for neglect or false statement.
15-35-122. Rulemaking authority.

Part 2 — New Coal Production Incentive Tax Credit Act (Repealed)

15-35-201. Repealed.
15-35-202. Repealed.
15-35-203. Repealed.
15-35-204. Repealed.
15-35-205. Repealed.

Chapter Cross-References
Coal tax trust fund, Art. IX, sec. 5, Mont. Const.
Coal gross proceeds tax, Title 15, ch. 23, part 7.
Resource indemnity trust tax, Title 15, ch. 38.
Coal Tax Oversight Committee, Ch. 619, L. 1979.

Part 1
General Provisions

Part Cross-References
Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-35-101. Legislative findings and declarations of purpose. (1) The legislature finds that although coal is extracted from the earth like metal minerals, there are differences between coal and metal minerals so that they should be classified in different categories for taxation purposes. The legislature finds that although coal can be used like petroleum products, there are differences between coal and petroleum so that they should be classified in different categories for taxation purposes. The legislature further finds that:

(a) coal is the only mineral that can supply energy while being easily found in abundance in Montana;

(b) coal is the only mineral that is so often marketed through sales contracts of many years' duration;

(c) coal, unlike most minerals, varies widely in composition and consequent value when marketed;

(d) coal in Montana is subject to regional and national demands for development that could affect the economy and environment of a larger portion of the state than any other mineral development has done;

(e) subbituminous coal and lignite coal in Montana have sufficiently different markets and value and therefore require different production taxes;

(f) coal produced in underground mines has higher production costs and underground producers are able to pay lesser amounts of royalty and production tax than strip-mine producers can pay;

(g) coal production in Montana has been subject to an uncoordinated array of taxes that overlap one another and yield revenue in an inconsistent and unpredictable manner; and

(h) coal used for the production of electricity near the coal mine by modern generating plants has significant statewide and nationwide economic, transportation, and environmental advantages that allow different production taxes.

(2) The legislature declares that the purposes of this chapter are to:

(a) allow the severance taxes on coal production to remain a constant percentage of the price of coal;

(b) stabilize the flow of tax revenue from coal mines to local governments through the property taxation system;

(c) simplify the structure of coal taxation in Montana, reducing tax overlap and improving the predictability of tax projections;

(d) recognize the economic, transportation, and environmental advantages of electrical generation by modern electrical generation plants near coal mines; and

(e) accomplish the purposes of this subsection (2) by establishing categories of taxation that recognize the unique character of coal, as well as the variations found within the coal industry, and by encouraging the use of coal to produce electricity in modern generating plants near the coal mine.

History: En. 84-1312 by Sec. 1, Ch. 525, L. 1975; R.C.M. 1947, 84-1312; amd. Sec. 1, Ch. 608, L. 1987; amd. Sec. 1, Ch. 399, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 399 inserted (1)(h) concerning coal used for production of electricity near the mine; inserted (2)(d) concerning advantages of electrical generation near coal mines; at end of (1)(e) inserted "and by encouraging the use of coal to produce electricity in modern generating plants near the coal mine"; and made minor changes in style. Amendment effective January 1, 2002.

Applicability: Section 4, Ch. 399, L. 2001, provided: "[This act] applies to coal produced after December 31, 2001."

15-35-102. *(Temporary)* **Definitions.** As used in this chapter, the following definitions apply:

(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) (a) "Base consumption level" for a purchaser, except as provided in subsection (2)(b), applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or

(ii) the greater of:

(A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or

(B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii).

(3) (a) Except as provided in subsection (3)(b), "base production level" for a coal mine operator applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or

(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.

(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).

(4) "Broker" means any person who resells Montana coal.

(5) "Btu" means British thermal unit and is the amount of heat required to raise 1 pound of water 1 degree Fahrenheit.

(6) "Coal enhancement facility" means a processing facility located at the site of the mine that produces a solid, liquid, or gaseous fuel from coal as its primary product and thermally or chemically alters the characteristics of coal by:

(a) improving the Btu value per pound of the coal by at least 25%; or

(b) reducing the sulfur content of the coal by at least 25% when based on pounds per million Btu.

(7) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how the royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only 15 cents per ton.

(8) "Department" means the department of revenue.

(9) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electrical energy, or any other form of energy.

(10) "Feedstock" means raw coal processed by a coal enhancement facility.

(11) "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

(12) "Produced" means severed from the earth.

(13) "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

(14) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed the purchaser's base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

(15) "Strip mining" is defined in 82-4-203 and includes "surface mining".

(16) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

(17) "Ton" means 2,000 pounds.

(18) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203. *(Terminates December 31, 2005—sec. 5, Ch. 318, L. 1995.)*

15-35-102. *(Effective January 1, 2006)* **Definitions.** As used in this chapter, the following definitions apply:

(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) (a) "Base consumption level" for a purchaser, except as provided in subsection (2)(b), applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or

(ii) the greater of:

(A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or

(B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii).

(3) (a) Except as provided in subsection (3)(b), "base production level" for a coal mine operator applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or

(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.

(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).

(4) "Broker" means any person who resells Montana coal.

(5) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how the royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only:

(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of federal, state, and tribal government royalties actually paid;

(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of federal, state, and tribal government royalties actually paid;

(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of federal, state, and tribal government royalties actually paid; and

(d) for quarterly periods ending on and after September 30, 1987, 15 cents per ton.

(6) "Department" means the department of revenue.

(7) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electrical energy, or any other form of energy.

(8) "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

(9) "Produced" means severed from the earth.

(10) "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

(11) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed the purchaser's base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

(12) "Strip mining" is defined in 82-4-203 and includes "surface mining".

(13) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

(14) "Ton" means 2,000 pounds.

(15) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203.

History: En. 84-1313 by Sec. 2, Ch. 525, L. 1975; amd. Sec. 1, Ch. 156, L. 1977; R.C.M. 1947, 84-1313; amd. Sec. 1, Ch. 377, L. 1983; amd. Sec. 2, Ch. 636, L. 1985; amd. Sec. 51, Ch. 370, L. 1987; amd. Sec. 2, Ch. 608, L. 1987; amd. Sec. 1, Ch. 31, L. 1989; amd. Sec. 1, Ch. 580, L. 1993; amd. Sec. 1, Ch. 318, L. 1995; amd. Sec. 21, Ch. 7, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 7 in definition of energy conversion process substituted "electrical energy" for "electric energy"; and in version effective January 1, 2006, made minor changes in style. Amendment effective October 1, 2001.

15-35-103. *(Temporary)* **Severance tax — rates imposed.** (1) (a) A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	10% of value	3% of value
7,000 and over	15% of value	4% of value

(b) The rate of taxation for coal that meets the following conditions is one-third the applicable rate set forth in subsection (1)(a), rounded to the nearest 10th of a percent:

(i) The coal is used for the production of electricity within the state in an electrical generation facility that was constructed after December 31, 2001, and before January 1, 2008.

(ii) The electrical producer agrees to offer, for use within the state, the first one-half of the amount of power that it produces to Montana customers and distribution services providers at a cost to be set by the public service commission that reflects the producer's cost of generating the electricity plus a reasonable return on investment.

(2) "Value" means the contract sales price.

(3) The formula that yields the greater amount of tax in a particular case must be used at each point on the schedule.

(4) A person is not liable for any severance tax upon 50,000 tons of the coal that the person produces in a calendar year, except that if more than 50,000 tons of coal are produced in a calendar year, the producer is liable for severance tax upon all coal produced in excess of the first 20,000 tons.

(5) In addition to the exemption described in subsection (4), a person is not liable for any severance tax upon up to 2 million tons of coal that the person produces as feedstock for coal enhancement facilities in a calendar year, except if more than 2 million tons of coal are produced as feedstock for coal enhancement facilities in a calendar year, the producer is liable for severance tax on all coal produced as feedstock for these facilities in excess of the first 2 million tons. *(Terminates December 31, 2005—sec. 5, Ch. 318, L. 1995.)*

15-35-103. *(Effective January 1, 2006)* **Severance tax — rates imposed.** (1) (a) A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	10% of value	3% of value
7,000 and over	15% of value	4% of value

(b) The rate of taxation for coal that meets the following conditions is one-third the applicable rate set forth in subsection (1)(a), rounded to the nearest 10th of a percent:

(i) The coal is used for the production of electricity within the state in an electrical generation facility that was constructed after December 31, 2001, and before January 1, 2008.

(ii) The electrical producer agrees to offer, for use within the state, the first one-half of the amount of power that it produces to Montana customers and distribution services providers at a cost to be set by the public service commission that reflects the producer's cost of generating the electricity plus a reasonable return on investment.

(2) "Value" means the contract sales price.

(3) The formula that yields the greater amount of tax in a particular case must be used at each point on the schedule.

(4) A person is not liable for any severance tax upon 50,000 tons of the coal that the person produces in a calendar year, except that if more than 50,000 tons of coal are produced in a calendar year, the producer is liable for severance tax upon all coal produced in excess of the first 20,000 tons.

History: En. 84-1314 by Sec. 3, Ch. 525, L. 1975; amd. Sec. 1, Ch. 164, L. 1977; R.C.M. 1947, 84-1314; amd. Sec. 2, Ch. 303, L. 1983; amd. Sec. 7, Ch. 636, L. 1985; amd. Sec. 3, Ch. 608, L. 1987; amd. Sec. 2, Ch. 31, L. 1989; amd. Sec. 2, Ch. 580, L. 1993; amd. Sec. 2, Ch. 318, L. 1995; amd. Sec. 34, Ch. 51, L. 1999; amd. Sec. 2, Ch. 399, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 399 inserted (1)(b) providing that rate of taxation is one-third of the applicable rate in subsection (1)(a) if the conditions contained in subsections (1)(b)(i) and (1)(b)(ii) are met; and made minor changes in style. Amendment effective January 1, 2002.

Applicability: Section 4, Ch. 399, L. 2001, provided: "[This act] applies to coal produced after December 31, 2001."

Cross-References

Property tax — mineral exemptions, 15-6-208.

Coal producer's license tax, 15-34-101.

15-35-104. Quarterly statement and payment of tax. Each coal mine operator shall compute the severance tax due on each quarter-year's worth of production on forms prescribed by the department. The statement shall indicate the tonnage produced, the average Btu value of the production, the contract sales price received for the production, and such other information as the department may require. Each coal mine operator shall provide a statement of the tons of coal sold to each purchaser for the quarter. The completed form in duplicate, with the tax payment, shall be delivered to the department not later than 30 days following the close of the quarter. The form shall be signed by the operator if the operator is an individual or by an officer of the coal mine operator if the operator is a business entity. A person operating more than one coal mine in this state may include all of his mines in one statement. The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.

History: En. 84-1315 by Sec. 4, Ch. 525, L. 1975; R.C.M. 1947, 84-1315; amd. Sec. 1, Ch. 334, L. 1981; amd. Sec. 4, Ch. 608, L. 1987.

Cross-References

Coordination with statement required under coal gross proceeds tax, 15-23-704.

15-35-105. Penalty and interest for delinquent tax — waiver. (1) The department shall add to the amount of all delinquent severance taxes penalty and interest as provided in 15-1-216.

(2) The department shall mail to the person required to file a quarterly report and pay any severance tax, a letter setting forth the amount of tax, penalty, and interest due. The letter must contain a statement that if payment is not made, a warrant for distraint may be filed.

(3) A penalty may be waived by the department pursuant to 15-1-206.

History: En. 84-1316 by Sec. 5, Ch. 525, L. 1975; R.C.M. 1947, 84-1316; amd. Sec. 16, Ch. 439, L. 1981; amd. Sec. 15, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.
Warrant for distraint, Title 15, ch. 1, part 7.

15-35-106. Annual testing of samples. The Montana state bureau of mines and geology shall test coal production subject to this chapter and may make rules governing the collection of test data. A person subject to this chapter shall submit to the bureau on or before August 1 each year a sample of mine-run, "as is" coal from each mine producing that year. Additional samples shall be submitted at the request of the bureau. The bureau shall compute the Btu per pound of each sample received and forward this information to the department prior to September 1 each year.

History: En. 84-1317 by Sec. 6, Ch. 525, L. 1975; R.C.M. 1947, 84-1317.

15-35-107. When value of coal may be imputed — procedure. (1) The department may or shall at the request of the taxpayer impute a value to the coal which approximates market value f.o.b. mine in a case where:

(a) the operator of a coal mine is using the produced coal in an energy-conversion or other manufacturing process;

(b) the operator of a coal mine refines the coal by drying, cleaning, or other processing designed to improve the quality of the coal;

(c) a person sells coal under a contract which is not an arm's-length agreement; or

(d) a person neglects or refuses to file a statement under 15-23-701 or a statement and tax return under this chapter.

(2) For purposes of subsection (1)(b), "market value f.o.b. mine" means the value of the coal subsequent to primary and secondary crushing but prior to drying, cleaning, or other processing.

(3) When imputing value, the department may apply the factors used by the federal government under 26 U.S.C. 613, or that provision as it may be labeled or amended, in determining gross income from mining or the department may apply any other or additional criteria it considers appropriate. Each subject taxpayer shall upon request by the department furnish a copy of its federal income tax return, with any amendments, filed for the year in which the value of coal is being imputed and copies of the contracts under which it is selling coal at the time. When the department's estimate of market value is contested in any proceeding, the burden of proof is on the contesting party.

History: En. 84-1318 by Sec. 7, Ch. 525, L. 1975; R.C.M. 1947, 84-1318; amd. Sec. 1, Ch. 326, L. 1983.

Cross-References

Estimating value upon failure to file gross proceeds return, 15-23-104.

15-35-108. *(Temporary)* **Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsections (7)(b) and (7)(c), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

(A) $125,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) $425,000 for certified communities;

(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement;

(iv) $350,000 to the office of economic development for business recruitment and retention; and

(v) $600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district.

(c) Beginning July 1, 2001, there is transferred annually from the interest income referred to in subsection (7)(b) $4.85 million to the research and commercialization state special revenue account created in 90-3-1002. *(Terminates June 30, 2005—sec. 10(2), Ch. 10, Sp. L. May 2000.)*

15-35-108. *(Effective July 1, 2005)* **Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding

unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

History: En. 84-1309.1 by Sec. 2, Ch. 432, L. 1973; amd. Sec. 1, Ch. 250, L. 1974; amd. Sec. 4, Ch. 501, L. 1975; amd. Sec. 3, Ch. 502, L. 1975; amd. and redes. 84-1319 by Sec. 8, Ch. 525, L. 1975; amd. Sec. 2, Ch. 156, L. 1977; amd. Sec. 1, Ch. 540, L. 1977; amd. Sec. 2, Ch. 549, L. 1977; R.C.M. 1947, 84-1319; amd. Sec. 1, Ch. 653, L. 1979; amd. Sec. 1, Ch. 694, L. 1979; amd. Sec. 1, Ch. 479, L. 1981; amd. Sec. 43, Ch. 505, L. 1981; amd. Sec. 3, Ch. 281, L. 1983; amd. Sec. 5, Ch. 541, L. 1983; amd. Sec. 1, Ch. 246, L. 1985; amd. Sec. 1, Ch. 715, L. 1985; amd. Sec. 1, Ch. 3, Sp. L. June 1986; amd. Sec. 1, Ch. 19, Sp. L. June 1986; amd. Sec. 1, Ch. 662, L. 1987; amd. Sec. 17, Ch. 83, L. 1989; amd. Sec. 1, Ch. 626, L. 1989; amd. Sec. 4, Ch. 11, Sp. L. June 1989; amd. Sec. 13, Ch. 16, L. 1991; amd. Sec. 3, Ch. 191, L. 1991; amd. Sec. 1, Ch. 615, L. 1991; amd. Sec. 1, Ch. 8, Sp. L. January 1992; amd. Sec. 1, Ch. 16, Sp. L. January 1992; amd. Sec. 5, Ch. 455, L. 1993; amd. Sec. 1, Ch. 536, L. 1993; amd. Sec. 12, Ch. 18, L. 1995; amd. Sec. 1, Ch. 442, L. 1995; amd. Sec. 1, Ch. 456, L. 1995; amd. Sec. 7, Ch. 509, L. 1995; amd. Sec. 9, Ch. 422, L. 1997; amd. Sec. 10, Ch. 469, L. 1997; amd. Sec. 8, Ch. 389, L. 1999; amd. Secs. 1, 2, Ch. 10, Sp. L. May 2000; amd. Secs. 3, 38, Ch. 34, L. 2001; amd. Sec. 1, Ch. 61, L. 2001; amd. Sec. 41, Ch. 483, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 34 in first sentence of (4) after "allocated to a" substituted "permanent fund account" for "nonexpendable trust fund" and in second sentence after "from this" substituted "permanent fund account" for "trust fund". Amendment effective July 1, 2001.

Chapter 61 in last sentence of (4) and (6) inserted "excluding unrealized gains and losses". Amendment effective March 16, 2001.

(Temporary version) Chapter 483 deleted former (7)(b)(iii)(A) that read: "(A) $350,000 for business recruitment"; inserted (7)(b)(iv) allocating $350,000 to the office of economic development for business recruitment and retention; and made minor changes in style. Amendment effective July 1, 2001.

(Version effective July 1, 2005) At beginning of (6) deleted "Beginning July 1, 1997, and ending June 30, 1999, the amount of 0.87% must be allocated to an account in the state special revenue fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Beginning July 1, 1999"; and made minor changes in style.

Code Commissioner Instruction: Pursuant to sec. 38, Ch. 34, L. 2001, in (7)(c) in temporary version the code commissioner changed "expendable trust fund" to "state special revenue account".

2000 Amendment: (Temporary version) Chapter 10 at beginning of (6) deleted "Beginning July 1, 1997, and ending June 30, 1999, the amount of 0.87% must be allocated to an account in the state special revenue fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Beginning July 1, 1999"; at beginning of (7)(a) inserted reference to subsection (7)(b); inserted (7)(b) statutorily appropriating fund interest to specific programs for biennium ending June 30, 2001; and made minor changes in style. Amendment effective May 22, 2000, and terminates June 30, 2001.

(Version effective July 1, 2001) Chapter 10 at beginning of (6) deleted "Beginning July 1, 1997, and ending June 30, 1999, the amount of 0.87% must be allocated to an account in the state special revenue fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Beginning July 1, 1999"; at beginning of (7)(a) inserted reference to subsections (7)(b) and (7)(c); inserted (7)(b) statutorily appropriating fund interest to specific programs on an annual basis; inserted (7)(c) transferring funds to the research and commercialization expendable trust; and made minor changes in style. Amendment effective July 1, 2001, and terminates June 30, 2005.

Cross-References

Coal tax trust fund, Art. IX, sec. 5, Mont. Const.

Genetic engineering technology research and development account — Montana State University-Bozeman, 17-2-131.

Permissible investments of funds allocated to coal tax trust fund, 17-6-211.

Appropriation to state equalization aid, 20-9-343.

Duties of Advisory Committee — cultural and aesthetic projects, Title 22, ch. 2, part 3.

Cultural and aesthetic projects grants, 22-2-301.

Acquisition of certain state parks, monuments, or historical sites, 23-1-108.

County land planning assistance, 90-1-108.

Creation of alternative energy research development and demonstration account, 90-4-103.

Disposition of funds allocated to local impact and education trust fund account and coal area highway improvement account, Title 90, ch. 6, part 2.

Coal area highway improvement account created, 90-6-202.

Local impact and education trust fund account created, 90-6-202.

15-35-109. Repealed. Sec. 1, Ch. 407, L. 1981.

History: En. 84-1325 by Sec. 18, Ch. 525, L. 1975; R.C.M. 1947, 84-1325.

15-35-110. Renumbered 15-35-121 by Code Commissioner, 1983.

15-35-111. Renumbered 15-35-122 by Code Commissioner, 1983.

15-35-112. Deficiency assessment — review — interest. (1) When the department determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest on any deficiency assessment must bear interest as provided in 15-1-216.

History: En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 13, Ch. 811, L. 1991; amd. Sec. 16, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-35-113. Credit for overpayment — interest on overpayment. (1) If the department determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest must be allowed on overpayments at the same rate as is charged on unpaid taxes provided in 15-1-216 due from the due date of the return or from the date of overpayment, whichever is later, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest may not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law may not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 2, Ch. 14, L. 1983; amd. Sec. 17, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-35-114. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

15-35-115 through 15-35-120 reserved.

15-35-121. Penalties for neglect or false statement. A person who fails, neglects, or refuses to file any statement required under this chapter or who makes a false statement commits a misdemeanor. A person convicted under this section shall be fined not to exceed $1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 84-1324 by Sec. 13, Ch. 525, L. 1975; R.C.M. 1947, 84-1324; MCA 1981, 15-35-110; redes. 15-35-121 by Code Commissioner, 1983.

15-35-122. Rulemaking authority. The department of revenue may adopt rules necessary for the taxation of property under this chapter.

History: En. Sec. 32, Ch. 581, L. 1979; MCA 1981, 15-35-111; redes. 15-35-122 by Code Commissioner, 1983.

Part 2
New Coal Production Incentive Tax Credit Act (Repealed)

15-35-201. Repealed. Sec. 98, Ch. 51, L. 1999.

History: En. Sec. 1, Ch. 636, L. 1985.

15-35-202. Repealed. Sec. 98, Ch. 51, L. 1999.

History: En. Sec. 3, Ch. 636, L. 1985; amd. Sec. 5, Ch. 608, L. 1987; amd. Sec. 3, Ch. 31, L. 1989.

15-35-203. Repealed. Sec. 98, Ch. 51, L. 1999.

History: En. Sec. 4, Ch. 636, L. 1985; amd. Sec. 6, Ch. 608, L. 1987.

15-35-204. Repealed. Sec. 98, Ch. 51, L. 1999.

History: En. Sec. 5, Ch. 636, L. 1985.

15-35-205. Repealed. Sec. 98, Ch. 51, L. 1999.

History: En. Sec. 6, Ch. 636, L. 1985.

CHAPTER 36

OIL AND GAS PRODUCTION TAX

Part 1 — General Provisions (Repealed)

15-36-101 through 15-36-110. Repealed.
15-36-111. Repealed.
15-36-112 through 15-36-126. Repealed.

Part 2 reserved

Part 3 — Oil and Gas Production Tax Act

15-36-301. Short title.
15-36-302. Legislative findings and declaration of purpose.
15-36-303. Definitions.
15-36-304. Production tax rates imposed on oil and natural gas.
15-36-305. Determination of gross value of product.
15-36-306 through 15-36-308 reserved.
15-36-309. Certain royalties exempt.
15-36-310. Operator responsible for payment — deduction of taxes from royalty payments.
15-36-311. Quarterly payment of tax — statement — failure to pay penalty.
15-36-312. Record of product — carriers to furnish data — penalty.
15-36-313. Procedure to compute tax in absence of statement — estimation of tax — failure to file penalty and interest.
15-36-314. Deficiency assessment — local government severance tax deficiency assessment — review — penalty and interest.
15-36-315. Credit or refund for overpayment — refund from county — interest on overpayment.
15-36-316 through 15-36-318 reserved.
15-36-319. Warrant for distraint.
15-36-320. Exemption from resource indemnity and ground water assessment tax.
15-36-321. Statute of limitations.

15-36-322. Rulemaking authority.
15-36-323. Repealed.
15-36-324. Distribution of taxes — rules.
15-36-325. Repealed.
15-36-326. Oil and natural gas accelerated tax fund.

Part 1
General Provisions
(Repealed)

15-36-101 through 15-36-110. Repealed. Sec. 50, Ch. 451, L. 1995.

Compiler's Comments

Histories of Repealed Sections:

15-36-101. En. Sec. 2, Ch. 266, L. 1921; re-en. Sec. 2398, R.C.M. 1921; amd. Sec. 1, Ch. 67, L. 1923; re-en. Sec. 2398, R.C.M. 1935; amd. Sec. 1, Ch. 221, L. 1957; amd. Sec. 1, Ch. 172, L. 1959; amd. Sec. 1, Ch. 359, L. 1969; amd. Sec. 1, Ch. 245, L. 1975; amd. Sec. 1, Ch. 262, L. 1975; amd. Sec. 1, Ch. 412, L. 1975; amd. Sec. 8, Ch. 156, L. 1977; amd. Sec. 1, Ch. 160, L. 1977; amd. Sec. 3, Ch. 256, L. 1977; R.C.M. 1947, 84-2202; amd. Sec. 1, Ch. 536, L. 1981; amd. Sec. 1, Ch. 671, L. 1983; amd. Sec. 1, Ch. 724, L. 1985; amd. Sec. 3, Ch. 656, L. 1987; amd. Sec. 1, Ch. 589, L. 1989; amd. Sec. 78, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 3, Sp. L. May 1990; amd. Exec. Ord. 12-90, implementing Sec. 7, Ch. 656, L. 1987; amd. Sec. 7, Ch. 267, L. 1991; amd. Sec. 1, Ch. 597, L. 1991; amd. Sec. 1, Ch. 299, L. 1993; amd. Sec. 9, Ch. 9, Sp. L. November 1993; amd. Sec. 1, Ch. 571, L. 1995; amd. Sec. 1, Ch. 581, L. 1995.

15-36-102. En. Sec. 3, Ch. 266, L. 1921; re-en. Sec. 2399, R.C.M. 1921; amd. Sec. 2, Ch. 67, L. 1923; re-en. Sec. 2399, R.C.M. 1935; amd. Sec. 8, Ch. 14, L. 1941; amd. Sec. 113, Ch. 516, L. 1973; amd. Sec. 2, Ch. 245, L. 1975; amd. Sec. 2, Ch. 262, L. 1975; R.C.M. 1947, 84-2203; amd. Sec. 79, Ch. 11, Sp. L. June 1989.

15-36-103. En. Sec. 4, Ch. 266, L. 1921; re-en. Sec. 2400, R.C.M. 1921; amd. Sec. 3, Ch. 67, L. 1923; re-en. Sec. 2400, R.C.M. 1935; amd. Sec. 114, Ch. 516, L. 1973; amd. Sec. 3, Ch. 245, L. 1975; R.C.M. 1947, 84-2204.

15-36-104. En. Sec. 6, Ch. 266, L. 1921; re-en. Sec. 2402, R.C.M. 1921; amd. Sec. 5, Ch. 67, L. 1923; re-en. Sec. 2402, R.C.M. 1935; amd. Sec. 116, Ch. 516, L. 1973; amd. Sec. 4, Ch. 245, L. 1975; amd. Sec. 9, Ch. 156, L. 1977; R.C.M. 1947, 84-2206; amd. Sec. 122, Ch. 27, Sp. L. November 1993.

15-36-105. En. Sec. 7, Ch. 266, L. 1921; re-en. Sec. 2403, R.C.M. 1921; amd. Sec. 6, Ch. 67, L. 1923; re-en. Sec. 2403, R.C.M. 1935; amd. Sec. 1, Ch. 449, L. 1973; amd. Sec. 117, Ch. 516, L. 1973; amd. Sec. 5, Ch. 245, L. 1975; amd. Sec. 4, Ch. 256, L. 1977; R.C.M. 1947, 84-2207; amd. Sec. 2, Ch. 334, L. 1981; amd. Sec. 1, Ch. 258, L. 1985; amd. Sec. 80, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 597, L. 1991; amd. Sec. 14, Ch. 811, L. 1991.

15-36-106. En. Sec. 8, Ch. 266, L. 1921; re-en. Sec. 2404, R.C.M. 1921; amd. Sec. 7, Ch. 67, L. 1923; re-en. Sec. 2404, R.C.M. 1935; R.C.M. 1947, 84-2208.

15-36-107. En. Sec. 9, Ch. 266, L. 1921; re-en. Sec. 2405, R.C.M. 1921; amd. Sec. 8, Ch. 67, L. 1923; re-en. Sec. 2405, R.C.M. 1935; amd. Sec. 1, Ch. 328, L. 1969; amd. Sec. 118, Ch. 516, L. 1973; amd. Sec. 6, Ch. 245, L. 1975; amd. Sec. 3, Ch. 262, L. 1975; R.C.M. 1947, 84-2209; amd. Sec. 17, Ch. 439, L. 1981; amd. Sec. 3, Ch. 93, L. 1983; amd. Sec. 2, Ch. 258, L. 1985; amd. Sec. 3, Ch. 597, L. 1991.

15-36-108. En. 84-2209.1 by Sec. 4, Ch. 262, L. 1975; amd. Sec. 10, Ch. 156, L. 1977; R.C.M. 1947, 84-2209.1; amd. Sec. 18, Ch. 439, L. 1981; amd. Sec. 4, Ch. 597, L. 1991.

15-36-109. En. Sec. 11, Ch. 266, L. 1921; re-en. Sec. 2407, R.C.M. 1921; re-en. Sec. 2407, R.C.M. 1935; R.C.M. 1947, 84-2210; amd. Sec. 27, Ch. 581, L. 1979.

15-36-110. En. Sec. 12, Ch. 266, L. 1921; re-en. Sec. 2408, R.C.M. 1921; re-en. Sec. 2408, R.C.M. 1935; R.C.M. 1947, 84-2211.

15-36-111. Repealed. Sec. 4, Ch. 334, L. 1981.

History: En. Sec. 5, Ch. 266, L. 1921; re-en. Sec. 2401, R.C.M. 1921; amd. Sec. 4, Ch. 67, L. 1923; re-en. Sec. 2401, R.C.M. 1935; amd. Sec. 115, Ch. 516, L. 1973; R.C.M. 1947, 84-2205.

15-36-112 through 15-36-126. Repealed. Sec. 50, Ch. 451, L. 1995.

Compiler's Comments

Histories of Repealed Sections:

15-36-112. En. Sec. 1, Ch. 700, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 2, Ch. 114, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 2, Ch. 707, L. 1983; amd. Sec. 11, Ch. 703, L. 1985; amd. Sec. 13, Ch. 611, L. 1987; amd. Sec. 81, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 3, Sp. L. May 1990; amd. Sec. 2, Ch. 610, L. 1991; amd. Sec. 28, Ch. 10, L. 1993; amd. Sec. 6, Ch. 455, L. 1993; amd. Sec. 13, Ch. 18, L. 1995; amd. Sec. 1, Ch. 453, L. 1995.

15-36-113. En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 5, Ch. 597, L. 1991; amd. Sec. 15, Ch. 811, L. 1991.

15-36-114. En. Sec. 2, Ch. 14, L. 1983; amd. Sec. 6, Ch. 597, L. 1991.

15-36-115 through 15-36-119 reserved.

15-36-120. En. Sec. 1, Ch. 536, L. 1989.

15-36-121. En. 84-2212, 84-2213 by Secs. 1, 2, Ch. 256, L. 1977; R.C.M. 1947, 84-2212, 84-2213(part); amd. Sec. 1, Ch. 265, L. 1981; amd. Sec. 1, Ch. 124, L. 1983; amd. Secs. 4, 6, Ch. 656, L. 1987; amd. Sec. 82, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 3, Sp. L. May 1990; amd. Exec. Ord. 9-90 and 12-90, implementing Sec. 7, Ch. 656, L. 1987; amd. Sec. 7, Ch. 597, L. 1991; amd. Sec. 2, Ch. 571, L. 1995; amd. Sec. 2, Ch. 581, L. 1995.

15-36-122. En. Sec. 1, Ch. 194, L. 1983.

15-36-123 through 15-36-125 reserved.
15-36-126. En. Sec. 5, Ch. 15, Sp. L. July 1992; amd. Sec. 1, Ch. 368, L. 1993; amd. Sec. 7, Ch. 455, L. 1993.

Part 2 reserved

Part 3

Oil and Gas Production Tax Act

Part Cross-References
Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-36-301. Short title. This part may be cited as the "Montana Oil and Natural Gas Production Tax Act".
History: En. Sec. 1, Ch. 451, L. 1995.

15-36-302. Legislative findings and declaration of purpose. (1) (a) The legislature finds that the extraction taxes imposed on the production of oil and natural gas have been exceedingly complex and confusing. Oil and natural gas producers have been required to file several tax forms and to pay taxes at different times on the same production.

(b) The legislature further finds that it is in the best interest of the state and in the best interest of oil and gas producers to simplify the taxation of oil and natural gas production.

(2) The legislature declares that the purposes of this part are:

(a) to replace all net proceeds taxes, severance taxes, privilege and license taxes, and other extraction taxes on oil and natural gas production with a single production tax based on the type of well and type of production;

(b) to ensure that the distribution of tax revenue to the state, counties, and school districts from the new production taxes is consistent with the distribution of tax revenue from the former extraction taxes;

(c) to simplify the procedures for compliance with and the administration of the taxation of oil and natural gas production;

(d) to provide an incentive for oil and natural gas producers to pay 1995 local government severance taxes on an accelerated basis; and

(e) to provide discretionary authority to counties and school districts for the use of the accelerated payments of the local government severance tax.
History: En. Sec. 2, Ch. 451, L. 1995.

15-36-303. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(2) "Department" means the department of revenue provided for in 2-15-1301.

(3) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

(4) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.

(5) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the recompletion of existing wells as horizontally completed wells, the change of an injection pattern, or other operating changes to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered. The project must be developed after December 31, 1993.

(6) "Gross taxable value", for the purpose of computing the oil and natural gas production tax, means the gross value of the product as determined in 15-36-305.

(7) "Horizontal drain hole" means that portion of a well bore with 70 degrees to 110 degrees deviation from the vertical and a horizontal projection within the common source of supply, as that term is defined by the board, that exceeds 100 feet.

(8) "Horizontally completed well" means:

(a) a well with one or more horizontal drain holes; and

(b) any other well classified by the board as a horizontally completed well.

(9) "Incremental production" means:

(a) the volume of oil produced by a new enhanced recovery project, by a well in primary recovery recompleted as a horizontally completed well, or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:

(i) the commencement of the recompletion of a well as a horizontally completed well;

(ii) expansion of the existing enhanced recovery project; or

(iii) commencing a new enhanced recovery project; or

(b) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of oil from the enhanced recovery project.

(10) "Natural gas" or "gas" means natural gas and other fluid hydrocarbons, other than oil, produced at the wellhead.

(11) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993.

(12) "Nonworking interest owner" means any interest owner who does not share in the exploration, development, and operation costs of the lease or unit, except for production taxes.

(13) "Oil" means crude petroleum or mineral oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form and that are not the result of condensation of gas after it leaves the wellhead.

(14) "Operator" or "producer" means a person who produces oil or natural gas within this state or who owns, controls, manages, leases, or operates within this state any well or wells from which any marketable oil or natural gas is extracted or produced.

(15) "Post-1999 well" means an oil or natural gas well drilled on or after January 1, 1999, that produces oil or natural gas or a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying as a post-1999 well.

(16) "Pre-1999 well" means an oil or natural gas well that was drilled before January 1, 1999.

(17) "Primary recovery" means the displacement of oil from the earth into the well bore by means of the natural pressure of the oil reservoir and includes artificial lift.

(18) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area prior to commencing a new or expanded enhanced recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department by the board. In that certification, the board shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under 15-36-304(5)(e).

(19) (a) "Qualifying production" means the first 12 months of production of oil or natural gas from a well drilled after December 31, 1998, or the first 18 months of production of oil or natural gas from a horizontally completed well drilled after December 31, 1998, or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production.

(b) Qualifying production does not include oil production from a horizontally recompleted well.

(20) "Secondary recovery project" means an enhanced recovery project, other than a tertiary recovery project, that commenced or was expanded after December 31, 1993, and meets each of the following requirements:

(a) The project must be certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(c) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of oil that may potentially be recovered. For purposes of this part, secondary recovery methods include but are not limited to:

(i) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of oil from the producing formation to a producing well bore; or

(ii) any other method approved by the board as a secondary recovery method.

(21) "Stripper natural gas" means the natural gas produced from any well that produces less than 60,000 cubic feet of natural gas a day during the calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

(22) "Stripper oil" means the oil produced from any well that produces less than 15 barrels a day for the calendar year immediately preceding the current year if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper tax rate in that quarter. There is no stripper well exemption tax rate if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is more than $38 a barrel. The average price for a barrel is computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

(23) "Stripper well exemption" means petroleum and other mineral or crude oil produced by a stripper well that produces 3 barrels a day or less.

(24) "Tertiary recovery project" means an enhanced recovery project, other than a secondary recovery project, using a tertiary recovery method that meets the following requirements:

(a) The project must be certified as a tertiary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated in the certification according to the specifications required by the board.

(c) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this part, tertiary recovery methods include but are not limited to:

(i) miscible fluid displacement;
(ii) steam drive injection;
(iii) micellar/emulsion flooding;
(iv) in situ combustion;
(v) polymer augmented water flooding;
(vi) cyclic steam injection;
(vii) alkaline or caustic flooding;
(viii) carbon dioxide water flooding;
(ix) immiscible carbon dioxide displacement; or
(x) any other method approved by the board as a tertiary recovery method.

(25) "Well" or "wells" means a single well or a group of wells in one field or production unit and under the control of one operator or producer.

(26) "Working interest owner" means the owner of an interest in an oil or natural gas well or wells who bears any portion of the exploration, development, and operating costs of the well or wells.

History: En. Sec. 3, Ch. 451, L. 1995. amd. Sec. 3, Ch. 571, L. 1995; amd. Sec. 3, Ch. 581, L. 1995; amd. Secs. 1, 4, Ch. 488, L. 1999; amd. Sec. 1, Ch. 530, L. 1999; amd. Secs. 1, 2, Ch. 554, L. 1999; amd. Sec. 1, Ch. 403, L. 2001; amd. Sec. 1, Ch. 421, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 403 in definition of expanded enhanced recovery project, new enhanced recovery project, and secondary recovery project after "December 31, 1993" deleted "and before January 1, 2002"; and made minor changes in style. Amendment effective April 28, 2001.

Chapter 421 in definition of stripper oil near end of second sentence after "stripper tax rate" deleted "including stripper well exemption tax rate" and inserted third sentence eliminating stripper well exemption tax rate when oil price exceeds $38 a barrel; and made minor changes in style. Amendment effective April 28, 2001.

Retroactive Applicability: Section 4, Ch. 421, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to production occurring on or after January 1, 2001."

15-36-304. Production tax rates imposed on oil and natural gas. (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in 15-36-324.

(2) Natural gas is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) (i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months		
(A) pre-1999 wells	14.8%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper natural gas pre-1999 wells	11%	14.8%
(c) horizontally completed well production		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months	9%	14.8%

(3) The reduced tax rates under subsection (2)(a)(i) on production for the first 12 months of natural gas production from a well begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(4) The reduced tax rate under subsection (2)(c)(i) on production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(5) Oil is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) primary recovery production		
(i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper oil production		
(i) first 1 through 10 barrels a day production	5.5%	14.8%
(ii) more than 10 barrels a day production	9.0%	14.8%
(c) stripper well exemption production	0.5%	14.8%
(d) horizontally completed well production		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(e) incremental production		

(i) new or expanded secondary recovery production	8.5%	14.8%
(ii) new or expanded tertiary production	5.8%	14.8%
(f) horizontally recompleted well		
(i) first 18 months	5.5%	14.8%
(ii) after 18 months		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%

(6) (a) The reduced tax rates under subsection (5)(a)(i) for the first 12 months of oil production from a well begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) (i) The reduced tax rates under subsection (5)(d)(i) on oil production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that the well has been certified as a horizontally completed well to the department by the board.

(ii) The reduced tax rate under subsection (5)(f)(i) on oil production from a horizontally recompleted well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection (5)(e) if the average price for each barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter as determined in subsection (6)(d), then incremental production from pre-1999 wells and from post-1999 wells is taxed at the rate imposed on primary recovery production under subsections (5)(a)(ii)(A) and (5)(a)(ii)(B), respectively, for production occurring in that quarter, other than exempt stripper well production. Stripper well exemption production is taxed as provided in subsection (5)(c) only if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $38 a barrel.

(d) For the purposes of subsection (6)(c), the average price for each barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(7) The tax rates imposed under subsections (2) and (5) on working interest owners and nonworking interest owners must be adjusted to include the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131.

History: En. Sec. 4, Ch. 451, L. 1995. amd. Sec. 3, Ch. 571, L. 1995; amd. Sec. 2, Ch. 573, L. 1995; amd. Sec. 4, Ch. 581, L. 1995; amd. Sec. 8, Ch. 466, L. 1997; amd. Sec. 2, Ch. 488, L. 1999; amd. Sec. 2, Ch. 530, L. 1999; amd. Secs. 3, 4, 17(3), Ch. 554, L. 1999; amd. Sec. 2, Ch. 421, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 421 in (6)(c) at end of second sentence inserted "other than exempt stripper well production" and inserted third sentence providing for taxation of stripper well exemption production when oil price is less than $38 a barrel; and made minor changes in style. Amendment effective April 28, 2001.

Retroactive Applicability: Section 4, Ch. 421, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to production occurring on or after January 1, 2001."

15-36-305. Determination of gross value of product. (1) The total gross value of all oil or natural gas produced and sold each quarter must be determined by taking the total number of barrels or cubic feet of oil or natural gas produced and sold each month at the average value at the mouth of the well during the month that the oil or natural gas is produced and sold, as determined by the department. However, in computing the total number of barrels of oil or cubic feet of gas produced and sold, there must be deducted the amount of oil or gas used by the person in connection with the operation of the well from which the oil or gas is produced or for pumping the oil or gas from the well to a tank or pipeline.

(2) For the purposes of determining average value at the mouth of a well, a fee of up to 25 cents a barrel paid to the operator or producer to administer royalty payments, whether or not the fee is payable on a per barrel basis, may not be considered a part of the value of the oil.

History: **En. Sec. 5, Ch. 451, L. 1995; amd. Sec. 1, Ch. 549, L. 1999.**

15-36-306 through 15-36-308 reserved.

15-36-309. Certain royalties exempt. Exempt from taxation are royalties received by:

(1) an Indian tribe with respect to on-reservation oil and gas production pursuant to a lease entered into under the Indian Mineral Leasing Act of 1938, 25 U.S.C. 396a through 396g;

(2) the United States as trustee for individual Indians; and

(3) the United States, the state of Montana, or a county or municipal government in Montana.

History: **En. Sec. 6, Ch. 451, L. 1995.**

15-36-310. Operator responsible for payment — deduction of taxes from royalty payments. (1) Each operator required to pay the oil and natural gas production tax under this part shall pay the tax in full for the operator's own account and for the account of each of the other owners of the gross value of product or in kind of all the marketable oil or natural gas produced and sold. Other owners include an owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, production payments, and all other interest or interests owned or carved out of the total gross value of product or in kind of the extracted marketable oil or natural gas.

(2) Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners must be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

History: **En. Sec. 7, Ch. 451, L. 1995.**

15-36-311. Quarterly payment of tax — statement — failure to pay penalty. (1) The oil and natural gas production tax must be paid in quarterly installments for the quarterly periods ending, respectively, March 31, June 30, September 30, and December 31 of each year, and the amount of the tax for each quarterly period must be paid to the department within 60 days after the end of each quarterly period.

(2) The operator shall complete on forms prescribed by the department a statement showing the total number of barrels of merchantable or marketable oil or cubic feet of natural gas produced and sold from pre-1985 wells and post-1985 wells by the person in the state during each month of the quarter and during the whole quarter, the average value of the production sold during each month, and the total value of the production sold for the whole quarter, together with the total amount due as taxes for the quarter. The statement must be filed within the time provided in subsection (1). The statement must be accompanied by the tax due. The statement must be signed by the individual or the president, vice president, treasurer, assistant treasurer, or authorized agent of the association, corporation, joint-stock company, or syndicate making the statement. A person engaged in carrying on business at more than one place in this state or owning, leasing, controlling, or operating more than one oil or gas well in this state may include all operations in one statement.

(3) If the tax is not paid on or before the due date, there must be assessed penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

History: **En. Sec. 8, Ch. 451, L. 1995; amd. Sec. 18, Ch. 427, L. 1999; amd. Sec. 3, Ch. 530, L. 1999.**

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-36-312. Record of product — carriers to furnish data — penalty. (1) Each person who purchases oil or natural gas shall keep a record of all oil or natural gas purchased by the person in this state. The records are subject to inspection by the department on reasonable notice at any time during normal business hours.

(2) Each railroad, pipeline, purchasing, and transportation company that carries or purchases oil or natural gas shall furnish to the department, whenever requested to do so, all data related to the shipment of oil or natural gas that may be required to properly enforce the provisions of this part. A railroad, pipeline, purchasing, or transportation company that fails to

comply with the provisions of this section is subject to a penalty of $100 for each day that it fails to furnish the statement.

History: **En. Sec. 9, Ch. 451, L. 1995.**

15-36-313. Procedure to compute tax in absence of statement — estimation of tax — failure to file penalty and interest. (1) If the operator fails to file any statement required by 15-36-311 within the time required, the department shall, immediately after the time has expired, ascertain the number of barrels of oil or cubic feet of gas produced and sold by the person in this state during the quarter and during each month of the quarter. The department also shall determine the average value of the barrels of oil produced and sold during each month or the average value of cubic feet of gas produced and sold during each month and fix the amount of the taxes due from the person for the quarter.

(2) The department shall impose penalty and interest as provided in 15-1-216. The department shall mail to the taxpayer a notice, pursuant to 15-1-211, of the tax, penalty, and interest proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The department may waive any penalty pursuant to 15-1-206.

History: **En. Sec. 10, Ch. 451, L. 1995; amd. Sec. 19, Ch. 427, L. 1999.**

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-36-314. Deficiency assessment — local government severance tax deficiency assessment — review — penalty and interest. (1) When the department determines that the amount of the tax due, including the amount due for the local government severance tax, is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) (a) The department shall collect deficiency assessments of the local government severance tax in the same manner as it collects oil and natural gas production tax deficiency assessments.

(b) Any local government severance taxes that are collected on oil and natural gas production occurring after December 31, 1988, and before January 1, 1995, must be treated as current revenue for the purposes of distribution and must be distributed pursuant to 15-36-324(12)(a).

(3) Penalty and interest must be added to a deficiency assessment as provided in 15-1-216.

History: **En. Sec. 11, Ch. 451, L. 1995; amd. Sec. 1, Ch. 295, L. 1997; amd. Sec. 35, Ch. 51, L. 1999; amd. Sec. 20, Ch. 427, L. 1999.**

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-36-315. Credit or refund for overpayment — refund from county — interest on overpayment. (1) If the department determines that the amount of tax, penalty, or interest due for any taxable period is less than the amount paid, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) (a) The amount of an overpayment credited against any tax, penalty, or interest due for any tax period or any refund or portion of a refund, which has not been distributed pursuant to 15-36-324, must be withheld from the current distribution made pursuant to 15-36-324.

(b) If the amount of the refund reduces the amount of tax previously distributed pursuant to 15-36-324 and if the current distribution, if any, is insufficient to offset the refund, then the department shall demand the amount of the refund from the county to which the tax was originally distributed. The county treasurer shall remit the amount demanded within 30 days of the receipt of notice from the department.

(3) A refund that is paid by the department for an overpayment of the local government severance tax for oil or natural gas production occurring after December 31, 1988, and before January 1, 1995, must be treated as issued for the current distribution period for distribution

purposes, and the refund must be apportioned in the same manner as taxes are distributed pursuant to 15-36-324(12)(a).

(4) Except as provided in subsection (5), interest must be allowed on overpayments at the same rate as is charged on unpaid taxes provided in 15-1-216 beginning from the due date of the return or from the date of overpayment, whichever date is later, to the date on which the department approves refunding or crediting of the overpayment.

(5) (a) Interest may not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date on which the return is due or from the date on which the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

History: En. Sec. 12, Ch. 451, L. 1995; amd. Sec. 2, Ch. 295, L. 1997; amd. Sec. 36, Ch. 51, L. 1999; amd. Sec. 21, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-36-316 through 15-36-318 reserved.

15-36-319. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed and recorded after the warrant is issued.

History: En. Sec. 13, Ch. 451, L. 1995.

15-36-320. Exemption from resource indemnity and ground water assessment tax. A person who has paid the tax on oil and natural gas under the provisions of this part is exempt from the resource indemnity and ground water assessment tax.

History: En. Sec. 14, Ch. 451, L. 1995.

15-36-321. Statute of limitations. (1) Except as otherwise provided in this section, a deficiency may not be assessed with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date on which the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period is later, unless before the expiration of the period, the taxpayer files a claim or the department of revenue has determined the existence of the overpayment and has approved the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if a claim is not filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 15, Ch. 451, L. 1995.

15-36-322. Rulemaking authority. The department shall adopt rules that are necessary to implement and administer this part.

History: En. Sec. 16, Ch. 451, L. 1995.

15-36-323. Repealed. Sec. 15, Ch. 554, L. 1999.

History: En. Sec. 17, Ch. 451, L. 1995; amd. Sec. 2, Ch. 453, L. 1995; amd. Sec. 8, Ch. 463, L. 1997; amd. Sec. 100, Ch. 584, L. 1999.

15-36-324. *(Temporary)* **Distribution of taxes — rules.** (1) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (9).

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on qualifying production occurring during the first 12 months of production must be distributed as provided in subsection (10).

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(b) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (9).

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the first 10 barrels of stripper oil production wells must be distributed as provided in subsection (10).

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper well exemption production from pre-1999 wells and post-1999 wells must be distributed as provided in subsection (10).

(6) Except as provided in subsections (7) and (8), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (11).

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(7) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from wells occurring during the first 12 months of production must be distributed as provided in subsection (10).

(8) The amount equal to 100% of natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(9) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(b), including late payment interest and penalty collected, as follows:

(a) 86.21% to the state general fund;

(b) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as follows:

(i) 50% to the resource indemnity trust fund of the nonexpendable trust fund type;

(ii) 25% to the reclamation and development grants special revenue account established in 90-2-1104; and

(iii) 25% to the orphan share account established in 75-10-743.

(10) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3), (4)(a), (5)(a), (5)(c), (7), and (8), including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(b) 62.5% to be distributed as follows:

(i) 50% to the resource indemnity trust fund of the nonexpendable trust fund type;

(ii) 25% to the reclamation and development grants special revenue account established by 90-2-1104; and

(iii) 25% to the orphan share account established in 75-10-743.

(11) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% to be distributed as follows:

(i) 50% to the resource indemnity trust fund of the nonexpendable trust fund type;

(ii) 25% to the reclamation and development grants special revenue account established in 90-2-1104; and

(iii) 25% to the orphan share account established in 75-10-743.

(12) (a) By the dates referred to in subsection (13), the department shall, except as provided in subsection (12)(b), calculate and distribute oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) to each eligible county in proportion to the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) that are attributable to production in that county.

(b) The department shall distribute 5% of the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) from pre-1999 wells to eligible counties in proportion to the underfunding that would have occurred from the tax liability distribution of pre-1985 oil and natural gas production taxes for production in calendar year 1997.

(c) Except as provided in subsection (12)(d), the county treasurer shall distribute the money received under subsection (12)(b) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(d) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (12)(c), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (12)(d)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(e) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (12)(e)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(f) The county treasurer shall distribute oil and natural gas production taxes received under subsection (12)(a) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The allocation to the county in subsection (12)(f) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(h) The money distributed in subsection (12)(f) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(i) The oil and natural gas production taxes distributed under subsection (12)(c) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the department.

(j) The oil and natural gas production taxes distributed under subsection (12)(f) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the department.

(k) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (12)(i) and (12)(j) is for the exclusive use and benefit of the county and school taxing units.

(13) The department shall remit the amounts to be distributed in subsection (12) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(14) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes.

(15) (a) In the event that the board revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board for its expenses.

(b) Before the department adopts a rule pursuant to subsection (15)(a), it shall present the proposed rule to the appropriate administrative rule review committee.

(16) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502.

15-36-324. *(Effective on occurrence of contingency)* **Distribution of taxes — rules.** (1) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (9).

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on qualifying production occurring during the first 12 months of production must be distributed as provided in subsection (10).

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(b) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (9).

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the first 10 barrels of stripper oil production wells must be distributed as provided in subsection (10).

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper well exemption production from pre-1999 wells and post-1999 wells must be distributed as provided in subsection (10).

(6) Except as provided in subsections (7) and (8), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (11).

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(7) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from wells occurring during the first 12 months of production must be distributed as provided in subsection (10).

(8) The amount equal to 100% of natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(9) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(b), including late payment interest and penalty collected, as follows:

(a) 86.21% to the state general fund;

(b) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as follows:

(i) a total of $400,000, including the proceeds from subsections (10)(b)(i) and (11)(c)(i), to the coal bed methane protection account established in 76-15-904;

(ii) 50% of the remaining proceeds to the reclamation and development grants special revenue account established in 90-2-1104; and

(iii) 50% of the remaining proceeds to the orphan share account established in 75-10-743.

(10) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3), (4)(a), (5)(a), (5)(c), (7), and (8), including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(b) 62.5% to be distributed as follows:

(i) a total of $400,000, including the proceeds from subsections (9)(c)(i) and (11)(c)(i), to the coal bed methane protection account established in 76-15-904;

(ii) 50% of the remaining proceeds to the reclamation and development grants special revenue account established in 90-2-1104; and

(iii) 50% of the remaining proceeds to the orphan share account established in 75-10-743.

(11) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% to be distributed as follows:

(i) a total of $400,000, including the proceeds from subsections (9)(c)(i) and (10)(b)(i), to the coal bed methane protection account established in 76-15-904;

(ii) 50% of the remaining proceeds to the reclamation and development grants special revenue account established in 90-2-1104; and

(iii) 50% of the remaining proceeds to the orphan share account established in 75-10-743.

(12) (a) By the dates referred to in subsection (13), the department shall, except as provided in subsection (12)(b), calculate and distribute oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) to each eligible county in proportion to the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) that are attributable to production in that county.

(b) The department shall distribute 5% of the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) from pre-1999 wells to eligible counties in proportion to the underfunding that would have occurred from the tax liability distribution of pre-1985 oil and natural gas production taxes for production in calendar year 1997.

(c) Except as provided in subsection (12)(d), the county treasurer shall distribute the money received under subsection (12)(b) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(d) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (12)(c), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (12)(d)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(e) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (12)(e)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(f) The county treasurer shall distribute oil and natural gas production taxes received under subsection (12)(a) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The allocation to the county in subsection (12)(f) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(h) The money distributed in subsection (12)(f) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(i) The oil and natural gas production taxes distributed under subsection (12)(c) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the department.

(j) The oil and natural gas production taxes distributed under subsection (12)(f) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the department.

(k) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (12)(i) and (12)(j) is for the exclusive use and benefit of the county and school taxing units.

(13) The department shall remit the amounts to be distributed in subsection (12) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(14) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes.

(15) (a) In the event that the board revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board for its expenses.

(b) Before the department adopts a rule pursuant to subsection (15)(a), it shall present the proposed rule to the appropriate administrative rule review committee.

(16) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502. *(Terminates June 30, 2011—sec. 10, Ch. 531, L. 2001.)*

15-36-324. *(Effective July 1, 2011)* **Distribution of taxes — rules.** (1) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (9).

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on qualifying production occurring during the first 12 months of production must be distributed as provided in subsection (10).

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(b) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (9).

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the first 10 barrels of stripper oil production wells must be distributed as provided in subsection (10).

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper well exemption production from pre-1999 wells and post-1999 wells must be distributed as provided in subsection (10).

(6) Except as provided in subsections (7) and (8), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (11).

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(7) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from wells occurring during the first 12 months of production must be distributed as provided in subsection (10).

(8) The amount equal to 100% of natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(9) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(b), including late payment interest and penalty collected, as follows:

(a) 86.21% to the state general fund;

(b) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as follows:

(i) 50% to the resource indemnity trust fund of the nonexpendable trust fund type;

(ii) 25% to the reclamation and development grants special revenue account established in 90-2-1104; and

(iii) 25% to the orphan share account established in 75-10-743.

(10) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3), (4)(a), (5)(a), (5)(c), (7), and (8), including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(b) 62.5% to be distributed as follows:

(i) 50% to the resource indemnity trust fund of the nonexpendable trust fund type;

(ii) 25% to the reclamation and development grants special revenue account established by 90-2-1104; and

(iii) 25% to the orphan share account established in 75-10-743.

(11) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% to be distributed as follows:

(i) 50% to the resource indemnity trust fund of the nonexpendable trust fund type;

(ii) 25% to the reclamation and development grants special revenue account established in 90-2-1104; and

(iii) 25% to the orphan share account established in 75-10-743.

(12) (a) By the dates referred to in subsection (13), the department shall, except as provided in subsection (12)(b), calculate and distribute oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) to each eligible county in proportion to the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) that are attributable to production in that county.

(b) The department shall distribute 5% of the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) from pre-1999 wells to eligible counties in proportion to the underfunding that would have occurred from the tax liability distribution of pre-1985 oil and natural gas production taxes for production in calendar year 1997.

(c) Except as provided in subsection (12)(d), the county treasurer shall distribute the money received under subsection (12)(b) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(d) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (12)(c), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (12)(d)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(e) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (12)(e)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(f) The county treasurer shall distribute oil and natural gas production taxes received under subsection (12)(a) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The allocation to the county in subsection (12)(f) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(h) The money distributed in subsection (12)(f) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(i) The oil and natural gas production taxes distributed under subsection (12)(c) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the department.

(j) The oil and natural gas production taxes distributed under subsection (12)(f) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the department.

(k) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (12)(i) and (12)(j) is for the exclusive use and benefit of the county and school taxing units.

(13) The department shall remit the amounts to be distributed in subsection (12) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(14) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes.

(15) (a) In the event that the board revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board for its expenses.

(b) Before the department adopts a rule pursuant to subsection (15)(a), it shall present the proposed rule to the appropriate administrative rule review committee.

(16) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502.

History: En. Sec. 18, Ch. 451, L. 1995; amd. Sec. 2, Ch. 453, L. 1995; amd. Sec. 77, Ch. 42, L. 1997; amd. Sec. 10, Ch. 422, L. 1997; amd. Secs. 9, 10, Ch. 466, L. 1997; amd. Sec. 4, Ch. 532, L. 1997; amd. Sec. 39, Ch. 19, L. 1999; amd. Sec. 3, Ch. 488, L. 1999; amd. Sec. 4, Ch. 530, L. 1999; amd. Secs. 5, 6, Ch. 554, L. 1999; amd. Sec. 28, Ch. 29, L. 2001; amd. Sec. 8, Ch. 257, L. 2001; amd. Sec. 2, Ch. 306, L. 2001; amd. Sec. 6, Ch. 531, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 29 in (14) at end of second sentence after "purposes" deleted "and for county bonding purposes"; in (15)(a) in two places after "board" deleted "of oil and gas conservation"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 257 in (5)(c) substituted "pre-1999" for "pre-1985" and "post-1999" for "post-1985"; and in (12)(i) and (12)(j) substituted references to department (of revenue) for references to state treasurer. Amendment effective July 1, 2001.

(Temporary version and version effective July 1, 2011) Chapter 306 in (5)(c) near middle after "production from" substituted "pre-1999 wells and post-1999 wells" for "pre-1985 wells and post-1985 wells"; at end of (9)(c), (10)(b), and (11)(c) after "distributed as" substituted "follows" for "provided in 15-38-106(2)"; inserted (9)(c)(i) specifying that 50% of certain oil production taxes go to the resource indemnity trust fund; inserted (9)(c)(ii) specifying that 25% of the oil production taxes go to a reclamation and development grants special revenue account; inserted (9)(c)(iii) specifying that 25% of the oil production taxes go to the orphan share account; inserted (10)(b)(i) specifying that 50% of certain oil and natural gas production taxes go to the resource indemnity trust fund; inserted (10)(b)(ii) specifying that 25% of the oil and natural gas production taxes go to a reclamation and development grants special revenue account; inserted (10)(b)(iii) specifying that 25% of the oil and natural gas production taxes go to the orphan share account; inserted (11)(c)(i) specifying that 50% of certain natural gas production taxes go to the resource indemnity trust fund; inserted (11)(c)(ii) specifying that 25% of the natural gas production taxes go to a reclamation and development grants special revenue account; inserted (11)(c)(iii) specifying that 25% of the natural gas production taxes go to the orphan share account; and made minor changes in style. Amendment effective April 21, 2001.

Chapter 531 in (5)(c) near end after "production from" substituted "pre-1999 wells and post-1999 wells" for "pre-1985 wells and post-1985 wells"; in (9)(c) at end of introductory clause substituted "distributed as follows" for "distributed as provided in 15-38-106(2)"; inserted (9)(c)(i) through (9)(c)(iii) regarding distribution of 8.62% of certain oil production taxes to the coal bed methane protection account, the reclamation and development grants special revenue account, and the orphan share account; in (10)(b) at end of introductory clause substituted "distributed as follows" for "distributed as provided in 15-38-106(2)"; inserted (10)(b)(i) through (10)(b)(iii) regarding distribution of 62.5% of certain oil and natural gas production taxes to the coal bed methane protection account, the reclamation and development grants special revenue account, and the orphan share account; in (11)(c) at end of introductory clause substituted "distributed as follows" for "distributed as provided in 15-38-106(2)"; inserted (11)(c)(i) through (11)(c)(iii) regarding distribution of 14.5% of certain natural gas production taxes to the coal bed methane protection account, the reclamation and development grants special revenue account, and the orphan share account; and made minor changes in style. Amendment effective on occurrence of contingency and terminates June 30, 2011.

The amendments to this section made by sec. 3, Ch. 306, L. 2001, were rendered void by sec. 8, Ch. 531, L. 2001, a coordination section.

Applicability: Section 35, Ch. 29, L. 2001, provided: "(1) [This act] applies to the authorization and issuance of bonds occurring on or after July 1, 2001.

(2) Debt limits established under [this act] do not apply to bonds authorized before July 1, 2001, regardless of when the bonds are issued."

Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

Code Commissioner Correction: The amendments made to this section by sec. 6, Ch. 531, L. 2001, do not expressly replace the amendments made by sec. 2, Ch. 306, L. 2001, but because Ch. 531 voided sec. 3, Ch. 306, the clear intent of the amendments by both chapters was for the amendments made by sec. 6, Ch. 531, L. 2001, to replace, rather than be incorporated into, the amendments made by sec. 2, Ch. 306. The code commissioner has codified this section accordingly.

Contingent Effective Date: Section 9, Ch. 531, L. 2001, provided: "[This act] is effective on July 1 immediately following the date that the governor by executive order certifies to the secretary of state that the resource indemnity trust fund balance has reached $100 million. The secretary of state shall notify the department of revenue, the department of administration, the code commissioner, and the legislative fiscal division of this certification."

15-36-325. Repealed. Sec. 15, Ch. 554, L. 1999.

History: En. Sec. 19, Ch. 451, L. 1995; amd. Sec. 78, Ch. 42, L. 1997; amd. Sec. 11, Ch. 466, L. 1997; amd. Sec. 5, Ch. 532, L. 1997; amd. Sec. 22, Ch. 427, L. 1999.

15-36-326. Oil and natural gas accelerated tax fund. (1) The county commissioners of a county that receives tax distributions under 15-36-325, as that section read on December 31, 1999, shall establish an oil and natural gas accelerated tax fund for the deposit of the distributions. The county commissioners may retain the money in the fund for any time period considered appropriate by the commissioners. Money retained in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(2) Money may be expended from the fund for any purpose allowed by law.

(3) Money in the fund must be invested as provided by law. Interest and income earned on the investment of money in the fund must be credited to the fund.

(4) The oil and natural gas accelerated tax fund must be financially administered as a nonbudgeted fund under the provisions of Title 7, chapter 6, part 23.

History: En. Sec. 20, Ch. 451, L. 1995; amd. Sec. 7, Ch. 554, L. 1999.

CHAPTER 37

MINING LICENSE TAXES

Part 1 — Metalliferous Mines

15-37-101. License tax on metal mines.
15-37-102. Gross value of metal mine yield — computation.
15-37-103. Rate of tax.
15-37-104. Mine operator's statement of gross value — reports and sampling.
15-37-105. Computation and payment of tax.
15-37-106. Procedure in case of failure to file statements.
15-37-107. Warrant for distraint.
15-37-108. Delinquent taxes — penalty and interest.
15-37-109. False or erroneous statements — investigation penalty and interest.
15-37-110. Review of determination of gross value of product or amount of tax.
15-37-111. License tax supplemental.
15-37-112. Returns of dissolved corporations.
15-37-113. Repealed.
15-37-114. Deficiency assessment — review — interest.
15-37-115. Credit for overpayment — interest on overpayment.
15-37-116. Statute of limitations.
15-37-117. Disposition of metalliferous mines license taxes.
15-37-118 through 15-37-125 reserved.
15-37-126. Terminated.

Part 2 — Micaceous Mineral Mines

15-37-201. License tax on micaceous mines.
15-37-202. Quarterly payment.
15-37-203. Records.
15-37-204. Quarterly return.
15-37-205. Procedure on failure to file statement.
15-37-206. Collection — warrant for distraint.
15-37-207. Disposition of proceeds of tax.
15-37-208. Repealed.
15-37-209. Renumbered 15-37-221 by Code Commissioner, 1983.
15-37-210. Deficiency assessment — review — interest.
15-37-211. Credit for overpayment — interest on overpayment.
15-37-212. Statute of limitations.
15-37-213 through 15-37-220 reserved.
15-37-221. Penalty for violations.
15-37-222 through 15-37-225 reserved.
15-37-226. Terminated.

Chapter Cross-References

Mines net proceeds tax, Title 15, ch. 23, part 5.
Metal mines gross proceeds tax, Title 15, ch. 23, part 8.
Resource indemnity trust tax, Title 15, ch. 38.
Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

Part 1
Metalliferous Mines

Part Cross-References

Disposition of tax proceeds, 15-1-501.
Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-37-101. License tax on metal mines. (1) Every person who engages in or carries on the business of working or operating any mine or mining property in the state of Montana from which gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones of any kind shall be mined, extracted, or produced, whether such person shall carry on such business or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for each year when engaged in or carrying on such business, work, or operations pay to the department of revenue for the exclusive use and benefit of the state of Montana and impacted local government units a license tax for engaging in and carrying on such business, work, or operation in this state.

(2) Nothing contained in this part shall be construed as requiring laborers or employees hired or employed by any person to mine or to work in or about any mine or mining business or property to pay such license taxes, nor shall any discovery work required to be done in prospecting for or locating any mining claims or any annual assessment work or work required in the obtaining of title to mining property from the United States or required by the laws of the United States or of this state in order to hold possessory title to any mining claims be deemed the engaging in or carrying on of the business of working or operating any such mine or mining property.

History: En. Sec. 2, Initiative No. 28, 1925; re-en. Sec. 2344.2, R.C.M. 1935; amd. Sec. 1, Ch. 126, L. 1975; R.C.M. 1947, 84-2002; amd. Sec. 5, Ch. 619, L. 1983.

15-37-102. Gross value of metal mine yield — computation. The "annual reporting date", as used in this part, means the last day of the calendar year. The "annual gross value of product", as used in this part, means the receipts received, as defined in 15-23-801, from all merchantable metals or concentrate containing metals or precious and semiprecious gems and stones extracted or produced each calendar year from any mine or mining property in the state or recovered from the smelting, milling, reduction, or treatment in any manner of ores extracted from the mine or mining property or from tailings resulting from the smelting, reduction, or treatment of the ores.

History: En. Sec. 3, Initiative No. 28, 1925; re-en. Sec. 2344.3, R.C.M. 1935; amd. Sec. 101, Ch. 516, L. 1973; amd. Sec. 4, Ch. 156, L. 1977; R.C.M. 1947, 84-2003; amd. Sec. 1, Ch. 227, L. 1983; amd. Sec. 1, Ch. 128, L. 1989; amd. Sec. 2, Ch. 672, L. 1989.

15-37-103. Rate of tax. (1) The annual license tax to be paid by a person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones are produced shall be an amount computed on the gross value of product which may have been derived by the person from mining business, work, or operation within this state during the calendar year immediately preceding.

(2) Concentrate shipped to a smelter, mill, or reduction work is taxed at the following rates:

Gross Value of Product	Rate of Tax (percentage of gross value)
first $250,000	0%
more than $250,000	1.81% of the increment

(3) Gold, silver, or any platinum-group metal that is dore, bullion, or matte and that is shipped to a refinery is taxed at the following rates:

Gross Value of Product	Rate of Tax (percentage of gross value)
first $250,000	0%
more than $250,000	1.6% of the increment

History: En. Sec. 4, Initiative No. 28, 1925; re-en. Sec. 2344.4, R.C.M. 1935; amd. Sec. 1, Ch. 220, L. 1957; amd. Sec. 1, Ch. 176, L. 1959; amd. Sec. 1, Ch. 9, Ex. L. 1969; amd. Sec. 1, Ch. 392, L. 1971; amd. Sec. 2, Ch. 126, L. 1975; amd. Sec. 5, Ch. 156, L. 1977; R.C.M. 1947, 84-2004; amd. Sec. 6, Ch. 619, L. 1983; amd. Sec. 3, Ch. 672, L. 1989.

15-37-104. Mine operator's statement of gross value — reports and sampling. (1) Every person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals, precious or semiprecious gems or stones are produced must, not later than March 31 following the end of each calendar year when engaged in or carrying on any mining business, work, or operation, make out a statement of the gross value of product from all mines and mining properties worked or operated by the person during the calendar year immediately preceding. If good cause is shown, the department may grant a reasonable extension of the time for filing statements. The statement shall be in the form prescribed by the department of revenue and shall show the following:

(a) the name, address, and telephone number of the owner, lessee, or operator of the mine or mining property;

(b) the mine's location by county and legal description;

(c) the number of tons of ore, concentrate, or other mineral products or deposits extracted from the mine or mining property during the period covered by the statement;

(d) the name and location of the smelter, mill, or reduction works to which the ore or concentrate has been shipped or sold during the period covered by the statement and other information as the department may require;

(e) the gross yield of the ores, concentrates, mineral products, or deposits in constituents of commercial value, such as the number of ounces of gold or silver, pounds of copper, lead, or zinc, or other commercially valuable constituents of the ores, concentrates, or mineral products or deposits, measured by standard units of measurement, during the period covered by the statement;

(f) the annual gross value of product in dollars and cents.

(2) This section applies regardless of the location of any smelter, mill, or reduction works to which the ore or concentrate is shipped.

(3) Any sampling, testing, or assaying made necessary to comply with this section must be completed within this state and prior to any mixture of the ore or concentrate to be assayed with ore or concentrate from any other mine or mining property.

History: En. Sec. 5, Initiative No. 28, 1925; re-en. Sec. 2344.5, R.C.M. 1935; amd. Sec. 102, Ch. 516, L. 1973; amd. Sec. 3, Ch. 126, L. 1975; R.C.M. 1947, 84-2005; amd. Sec. 2, Ch. 288, L. 1981; amd. Sec. 2, Ch. 227, L. 1983; amd. Sec. 2, Ch. 128, L. 1989; amd. Sec. 4, Ch. 672, L. 1989.

15-37-105. Computation and payment of tax. (1) The tax due under this part is computed according to 15-37-103 and is due and payable on or before March 31 of each year for the products produced in the preceding calendar year. The tax due under this part becomes delinquent as of midnight on March 31 of the year immediately following the production year. If good cause is shown, the department may grant a reasonable extension of time for payment of the tax. During the period of any extension granted, the tax due bears interest as provided in 15-1-216.

(2) If any person has sold or otherwise disposed of any of the mine's products at a price substantially below the true market price of the product at the time and place of sale or disposal, then the department shall compute the gross value of the portion of the mine's product sold or disposed of substantially below the market price. The gross value must be based upon the quotations of the price of the mine's product in New York City at the time the portion of the product was sold or otherwise disposed of as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York, or some other standard publication, giving the market reports for the year covered by the statement. If there is no quotation covering any particular product, then the department shall fix the value of the gross product or portion of the gross product that was sold or otherwise disposed of at a price substantially below the true market price at the time and place of sale or disposal in a manner as may seem to be equitable.

History: En. Sec. 6, Initiative No. 28, 1925; re-en. Sec. 2344.6, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1959; amd. Sec. 103, Ch. 516, L. 1973; amd. Sec. 4, Ch. 126, L. 1975; R.C.M. 1947, 84-2006; amd. Sec. 3, Ch. 227, L. 1983; amd. Sec. 3, Ch. 128, L. 1989; amd. Sec. 5, Ch. 672, L. 1989; amd. Sec. 23, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-37-106. Procedure in case of failure to file statements. If any person shall fail, refuse, or neglect to make and file the required annual statement of gross yield for a production year on or before March 31 of the year immediately following the production year, the department of revenue shall, immediately after the time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with any state or county officer or board under any law of this state and from any other information which the department may be able to obtain the total gross value of product of the person from the business during the calendar year immediately preceding the year in which the license tax is to be paid. The department shall make and file a statement showing the amount of the gross value of product and shall ascertain, determine, compute, and assess the amount of the license taxes due from and to be paid by the person and shall immediately give notice to the person in the same manner as though the statement had been filed within time. The department shall proceed to collect the license tax, along with the same penalty and interest as provided for other delinquencies.

History: En. Sec. 8, Initiative No. 28, 1925; re-en. Sec. 2344.8, R.C.M. 1935; amd. Sec. 104, Ch. 516, L. 1973; amd. Sec. 6, Ch. 126, L. 1975; R.C.M. 1947, 84-2008; amd. Sec. 4, Ch. 227, L. 1983; amd. Sec. 4, Ch. 128, L. 1989; amd. Sec. 6, Ch. 672, L. 1989.

15-37-107. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded.

History: En. 84-2008.1 by Sec. 10, Ch. 126, L. 1975; amd. Sec. 6, Ch. 156, L. 1977; R.C.M. 1947, 84-2008.1; amd. Sec. 19, Ch. 439, L. 1981.

15-37-108. Delinquent taxes — penalty and interest. All license taxes assessed under the provisions of this part become delinquent if not paid on or before midnight of March 31 of the year immediately following the production year. The department shall add to the amount of delinquent metalliferous mines tax penalty and interest as provided in 15-1-216. The department may waive a late payment penalty as provided in 15-1-206.

History: En. Sec. 7, Initiative No. 28, 1925; re-en. Sec. 2344.7, R.C.M. 1935; amd. Sec. 2, Ch. 165, L. 1959; amd. Sec. 5, Ch. 126, L. 1975; R.C.M. 1947, 84-2007; amd. Sec. 5, Ch. 227, L. 1983; amd. Sec. 5, Ch. 128, L. 1989; amd. Sec. 7, Ch. 672, L. 1989; amd. Sec. 24, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

Deficiency assessment procedure, 15-37-114.

15-37-109. False or erroneous statements — investigation penalty and interest. (1) When the department determines that any statement and return is false or erroneous, it may require a person or the officers or the employees of the person, to testify concerning the statement and return and may examine all books, records, papers, and documents of the person, pertaining to the business, upon giving 5 days' written notice to the person or officers or employees having custody of the books, records, papers, and documents. A person who fails to appear or who refuses to be sworn, to testify, or to answer any material question propounded by the department or who refuses to permit the department to examine the books, records, papers, or documents pertaining to the business is considered guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $1,000 or by imprisonment in the county jail for not more than 6 months or by both fine and imprisonment. If the department, after hearing the evidence and after the examination of the books, papers, documents, and records of the person, finds that the statement and return are erroneous or false in any material matter, the department shall correct the return to show the true gross value of product and shall reassess the amount of the license tax due from the person and may add to the tax a penalty of not more than 50% and shall immediately mail to the person a written notice of the corrections made to the statement and return and the amount of the license tax and penalty due and payable.

(2) The department shall collect the license tax with penalty added, and if the tax has become delinquent, it shall also collect interest as provided in 15-1-216. In order to verify the statement and return, the department may require any person engaged in the business of smelting, milling, reduction, or treatment of ores extracted or produced from any mine or mining property in the state to appear before the department and testify concerning the gross mineral content of any ore or at the request of the department to furnish sworn statements showing the gross yield of the ores, mineral products, or deposits in constituents of commercial value including the number of ounces of gold or silver, pounds of copper, lead, or zinc, or other commercially valuable constituents of the ores or mineral products or deposits, measured by standard units of measurement, during the period covered by the statement, without any deductions for smelting, milling, reduction, or treatment of the ores or mineral product.

(3) The books, records, papers, and documents of the person engaged in the business of smelting, milling, reduction, or treatment in any manner of ores extracted or produced by any

mine or mining property in the state must be open to inspection and examination by the department at any time or place that the department may designate.

(4) If a person required by this part to file a return or to verify, under oath, any statement on the return makes a false statement in any material respect or verifies, under oath, any false statement or fails to file any statement required by the department or refuses to appear before the department to testify concerning the gross mineral content of any ore or refuses to allow the department at any time or place to inspect or examine the books, records, papers, and documents of the person engaged in the business of smelting, milling, reduction, or treatment of ores extracted or produced by any mine or mining property in the state, the person is considered guilty of a misdemeanor and shall be punished by a fine of not more than $1,000 or by imprisonment in the county jail for not more than 6 months or by both a fine and imprisonment.

History: **En. Sec. 9, Initiative No. 28, 1925; re-en. Sec. 2344.9, R.C.M. 1935; amd. Sec. 72, Ch. 405, L. 1973; amd. Sec. 7, Ch. 126, L. 1975; R.C.M. 1947, 84-2009; amd. Sec. 25, Ch. 427, L. 1999.**

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

Deficiency assessment procedure, 15-37-114.

15-37-110. Review of determination of gross value of product or amount of tax. Every person whose license tax has been determined and assessed by the department of revenue under any of the provisions of this part who feels aggrieved by the determination and assessment of the department as to the amount of gross value of product or as to the amount of the license tax may seek review pursuant to 15-1-211.

History: **En. Sec. 10, Initiative No. 28, 1925; re-en. Sec. 2344.10, R.C.M. 1935; amd. Sec. 73, Ch. 405, L. 1973; amd. Sec. 8, Ch. 126, L. 1975; amd. Sec. 7, Ch. 156, L. 1977; R.C.M. 1947, 84-2010; amd. Sec. 16, Ch. 811, L. 1991.**

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

15-37-111. License tax supplemental. The license taxes herein provided for shall be in addition to all other taxes, licenses, and other fees now required to be paid by persons subject to the provisions of this part.

History: **En. Sec. 14, Initiative No. 28, 1925; re-en. Sec. 2344.14, R.C.M. 1935; R.C.M. 1947, 84-2014.**

15-37-112. Returns of dissolved corporations. Every corporation which shall be dissolved or cease to do business in this state during any taxpaying year shall, on or before the date of such dissolution or cessation of business, make all statements, reports, and returns required by law to be made with reference to the carrying on of the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals, precious or semiprecious gems or stones are produced and pay the tax due for such period as it carried on such business. The department of revenue may grant a reasonable extension of time for filing returns upon good cause shown therefor.

History: **En. Sec. 1, Ch. 11, L. 1941; amd. Sec. 108, Ch. 516, L. 1973; R.C.M. 1947, 84-2016.**

15-37-113. Repealed. Sec. 4, Ch. 334, L. 1981.

History: **En. Sec. 13, Initiative No. 28, 1925; re-en. Sec. 2344.13, R.C.M. 1935; amd. Sec. 107, Ch. 516, L. 1973; amd. Sec. 11, Ch. 126, L. 1975; R.C.M. 1947, 84-2013.**

15-37-114. Deficiency assessment — review — interest. (1) When the department determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest on any deficiency assessment must bear interest as provided in 15-1-216.

History: **En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 17, Ch. 811, L. 1991; amd. Sec. 26, Ch. 427, L. 1999.**

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-37-115. Credit for overpayment — interest on overpayment. (1) If the department determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest must be allowed on overpayments at the same rate as is charged on the amount of unpaid tax, as provided in 15-1-216, due from the due date of the return or from the date of overpayment, whichever is later, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest may not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this chapter is not considered an overpayment with respect to which interest is allowable.

History: En. Sec. 2, Ch. 14, L. 1983; amd. Sec. 27, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-37-116. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

15-37-117. *(Temporary)* **Disposition of metalliferous mines license taxes.** (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501, be allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 2.5% of total collections each year;

(c) to the orphan share state special revenue account established in 75-10-743, 8.5% of total collections each year;

(d) to the reclamation and development grants program state special revenue account, 7% of total collections each year; and

(e) on or before June 1, to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 24% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 37.5% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(e)(i) to be further allocated as follows:

(A) 33 ⅓% is allocated to the county for planning or economic development activities;

(B) 33 ⅓% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 ⅓% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(e) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(e). The allocation to the county described by subsection (1)(e) is a statutory appropriation pursuant to 17-7-502.

15-37-117. *(Effective July 1, 2002)* **Disposition of metalliferous mines license taxes.** (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501, be allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 2.5% of total collections each year;

(c) to the hard-rock mining reclamation debt service fund created in 82-4-312, 8.5% of total collections each year;

(d) to the reclamation and development grants program state special revenue account, 7% of total collections each year; and

(e) on or before June 1, to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 24% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 37.5% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(e)(i) to be further allocated as follows:

(A) 33 ⅓% is allocated to the county for planning or economic development activities;

(B) 33 ⅓% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 ⅓% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(e) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(e). The allocation to the county described by subsection (1)(e) is a statutory appropriation pursuant to 17-7-502.

History: En. Sec. 1, Ch. 619, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 8, Ch. 672, L. 1989; amd. Sec. 2, Ch. 760, L. 1991; amd. Sec. 7, Ch. 15, Sp. L. July 1992; amd. Sec. 8, Ch. 455, L. 1993; amd. Sec. 14, Ch. 18, L. 1995; amd. Sec. 1, Ch. 31, L. 1995; amd. Secs. 1, 8, Ch. 577, L. 1995; amd. Sec. 21, Ch. 584, L. 1995; amd. Sec. 1, Ch. 415, L. 1997; amd. Sec. 3, Ch. 144, L. 1999; amd. Sec. 1, Ch. 464, L. 1999; amd. Sec. 5, Ch. 460, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 460 in (1)(c) substituted "hard-rock mining reclamation debt service fund created in 82-4-312" for "orphan share state special revenue account established in 75-10-743". Amendment effective July 1, 2002.

15-37-118 through 15-37-125 reserved.

15-37-126. Terminated. Sec. 39(3), Ch. 15, Sp. L. July 1992.

History: En. Sec. 6, Ch. 15, Sp. L. July 1992.

Part 2
Micaceous Mineral Mines

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-37-201. License tax on micaceous mines. Every person engaged in or carrying on the business of working or operating any mine or mining property in the state from which vermiculite, perlite, kerrite, maconite, or any other micaceous minerals are mined, extracted, or produced must pay to the department of revenue for the exclusive use and benefit of the state a license tax for engaging in and carrying on such business in an amount equal to 5 cents per ton for each and every ton of concentrates mined, extracted, or produced by such person during such year.

History: En. Sec. 2, Ch. 50, L. 1951; amd. Sec. 224, Ch. 516, L. 1973; amd. Sec. 1, Ch. 209, L. 1977; R.C.M. 1947, 84-5902.

15-37-202. Quarterly payment. Such annual license tax as imposed by 15-37-201 shall be paid in quarterly installments for the quarters ending, respectively, March 31, June 30, September 30, and December 31 of each year, and the amount of such license tax due for each such quarter shall be paid to the department of revenue within 30 days after the end of each quarter.

History: En. Sec. 3, Ch. 50, L. 1951; amd. Sec. 225, Ch. 516, L. 1973; R.C.M. 1947, 84-5903.

15-37-203. Records. Each person subject to 15-37-201 shall keep a record in the form required by the department of all products mined or produced by the person in this state. The records must at all times during business hours be subject to inspection by the department.

History: En. Sec. 5, Ch. 50, L. 1951; amd. Sec. 227, Ch. 516, L. 1973; R.C.M . 1947, 84-5905; amd. Sec. 123, Ch. 27, Sp. L. November 1993.

15-37-204. Quarterly return. (1) Each and every person must, within 30 days after the end of each quarter, make out on forms prescribed by the department of revenue and deliver to the department a statement showing the total number of tons of concentrates of vermiculite, perlite, kerrite, maconite, or any other micaceous minerals mined or produced by such person during each month of such quarter and during the whole quarter and such other information as the department may require, together with the total amount due to the state as license taxes for such quarter, and must, within such 30 days and at the same time such statement is delivered to the department, pay to the department the amount of the license taxes shown by such statement to be due to the state for the quarter for which such statement is made.

(2) Any person engaged in carrying on such business at more than one place or operating more than one mine in this state may include all thereof in one statement.

(3) The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.

History: En. Sec. 6, Ch. 50, L. 1951; amd. Sec. 228, Ch. 516, L. 1973; amd. Sec. 2, Ch. 209, L. 1977; R.C.M. 1947, 84-5906.

15-37-205. Procedure on failure to file statement. (1) If a person fails to file any statement required by 15-37-204 within the time required or fails to pay the tax required by this part on or before the date the payment is due, the department shall immediately after the time has expired proceed to determine the amount produced by the person within this state during the quarter and during each month of the quarter and shall determine and fix the amount of the license taxes due to the state from the person for the quarter.

(2) The department shall add to the amount of all delinquent micaceous mineral mines license taxes penalty and interest as provided in 15-1-216. The department may waive a penalty pursuant to 15-1-206.

History: En. Sec. 7, Ch. 50, L. 1951; amd. Sec. 229, Ch. 516, L. 1973; amd. Sec. 3, Ch. 209, L. 1977; R.C.M. 1947, 84-5907(1), (2); amd. Sec. 28, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-37-206. Collection — warrant for distraint. (1) The department shall mail to the person required to file a quarterly statement and pay any license tax a letter and tax assessment statement setting forth the amount of delinquent license tax, penalty, and interest due. The letter shall advise that if payment is not made, a warrant for distraint may be filed.

(2) If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded.

History: En. Sec. 7, Ch. 50, L. 1951; amd. Sec. 229, Ch. 516, L. 1973; amd. Sec. 3, Ch. 209, L. 1977; R.C.M. 1947, 84-5907(3); amd. Sec. 20, Ch. 439, L. 1981.

15-37-207. Disposition of proceeds of tax. All license taxes collected under the provisions of this part shall be deposited to the credit of the general fund of the state.

History: En. Sec. 8, Ch. 50, L. 1951; R.C.M. 1947, 84-5908.

15-37-208. Repealed. Sec. 4, Ch. 334, L. 1981.

History: En. Sec. 4, Ch. 50, L. 1951; amd. Sec. 226, Ch. 516, L. 1973; R.C.M. 1947, 84-5904.

15-37-209. Renumbered 15-37-221 by Code Commissioner, 1983.

15-37-210. Deficiency assessment — review — interest. (1) When the department determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest on any deficiency assessment must bear interest as provided in 15-1-216.

History: En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 18, Ch. 811, L. 1991; amd. Sec. 29, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-37-211. Credit for overpayment — interest on overpayment. (1) If the department determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment must be credited against any tax, penalty, or interest due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest must be allowed on overpayments at the same rate as provided in 15-1-216 due from the due date of the return or from the date of overpayment, whichever is later, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest may not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to which interest is allowable.

History: En. Sec. 2, Ch. 14, L. 1983; amd. Sec. 30, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-37-212. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

15-37-213 through 15-37-220 reserved.

15-37-221. Penalty for violations. Any violation of any of the provisions of this part shall be deemed a misdemeanor and shall be punished by a fine not exceeding $500 or by imprisonment in the county jail not exceeding 6 months or by both such fine and imprisonment.

History: En. Sec. 9, Ch. 50, L. 1951; R.C.M. 1947, 84-5909; MCA 1981, 15-37-209; redes. 15-37-221 by Code Commissioner, 1983.

15-37-222 through 15-37-225 reserved.

15-37-226. Terminated. Sec. 39(2), Ch. 15, Sp. L. July 1992.

History: En. Sec. 8, Ch. 15, Sp. L. July 1992.

CHAPTER 38

RESOURCE INDEMNITY TRUST AND GROUND WATER ASSESSMENT

Part 1 — General Provisions

15-38-101. Short title.
15-38-102. Legislative policy.
15-38-103. Definitions.
15-38-104. Tax on mineral production.
15-38-105. Report of gross yield from mines.
15-38-106. Payment of tax — records — collection of taxes — refunds.
15-38-107. Procedure in case of failure to file statement.
15-38-108. Warrant for distraint.
15-38-109. Restricted access to records.
15-38-110. Deficiency assessment — review — interest.
15-38-111. Credit for overpayment — interest on overpayment.
15-38-112. Statute of limitations.
15-38-113. Exemption from resource indemnity and ground water assessment tax.
15-38-114 through 15-38-120 reserved.
15-38-121. Certain royalties exempt.
15-38-122 through 15-38-124 reserved.
15-38-125. Gross value of product for coal.
15-38-126. Gross value of product for talc.
15-38-127. Gross value of product for vermiculite.
15-38-128. Gross value of product for limestone.
15-38-129. Gross value of product for industrial garnets and byproducts.
15-38-130 through 15-38-135 reserved.
15-38-136. Terminated.

Part 2 — Resource Indemnity Trust Fund

15-38-201. Creation of resource indemnity trust fund.
15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance.
15-38-203. Purpose of fund usage — limitation on future use.

Chapter Cross-References

Resource indemnity trust, Art. IX, sec. 2, Mont. Const.
Environmental contingency grant program, Title 75, ch. 1, part 11.
Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

Part 1
General Provisions

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-38-101. Short title. This chapter shall be known and may be cited as "The Montana Resource Indemnity Trust and Ground Water Assessment Act".

History: En. 84-7001 by Sec. 1, Ch. 497, L. 1973; R.C.M. 1947, 84-7001; amd. Sec. 14, Ch. 769, L. 1991.

15-38-102. Legislative policy. It is the policy of the state of Montana to indemnify its citizens for the loss of long-term value resulting from the depletion of its mineral resource base and for environmental damage caused by mineral development. This policy of indemnification is achieved by establishing a permanent resource indemnity trust, as required by Article IX, section 2, of the Montana constitution, by supporting ground water assessment programs from the proceeds of a tax levied on mineral extraction, and by allocating spendable revenues:

(1) to protect and restore the environment from damages resulting from mineral development;

(2) to support a variety of development programs that benefit the economy of the state and the lives of Montana citizens; and

(3) to assess the state's ground water resources.

History: En. 84-7002 by Sec. 2, Ch. 497, L. 1973; R.C.M. 1947, 84-7002; amd. Sec. 11, Ch. 418, L. 1987; amd. Sec. 15, Ch. 769, L. 1991.

15-38-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means department of revenue.

(2) "Gross value of product" means, except as provided in 15-38-125 through 15-38-129, the market value of any merchantable mineral extracted or produced during the taxable year.

(3) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, talc, vermiculite, limestone, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(4) "Total environment" means air, water, soil, flora, and fauna and the social, economic, and cultural conditions that influence communities and individual citizens.

History: En. 84-7003 by Sec. 3, Ch. 497, L. 1973; amd. Sec. 23, Ch. 52, L. 1977; R.C.M. 1947, 84-7003; amd. Sec. 11, Ch. 531, L. 1989; amd. Sec. 1, Ch. 520, L. 1991; amd. Sec. 12, Ch. 695, L. 1991; amd. Sec. 11, Ch. 506, L. 1993; amd. Sec. 1, Ch. 10, L. 1995; amd. Sec. 11, Ch. 397, L. 1995.

15-38-104. Tax on mineral production. (1) Except as provided in subsections (2) through (5), the annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing a mineral is $25, plus an additional amount computed on the gross value of product that was derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 1/2 of 1% of the amount of gross value of product at the time of extraction from the ground, if in excess of $5,000. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners may be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(2) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing:

(a) talc is $25 plus an additional amount computed on the gross value of product for talc derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 4% of the gross value of product in excess of $625; and

(b) coal is $25 plus an additional amount computed on the gross value of product for coal produced in Montana during the calendar year immediately preceding at the rate of 0.4% of the gross value of product in excess of $6,250.

(3) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing vermiculite is $25 plus an additional amount computed on the gross value of product for vermiculite derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 2% of the gross value of product in excess of $1,250.

(4) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing limestone for the production of quicklime is $25 plus an additional amount computed on the gross value of product for limestone derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 10% of the gross value of product in excess of $250.

(5) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing industrial garnets and associated byproducts is $25 plus an additional amount computed on the gross value of product for industrial garnets and associated byproducts derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 1% on the gross value of product in excess of $2,500.

History: En. 84-7006 by Sec. 6, Ch. 497, L. 1973; amd. Sec. 1, Ch. 495, L. 1977; R.C.M. 1947, 84-7006; amd. Sec. 12, Ch. 531, L. 1989; amd. Sec. 2, Ch. 520, L. 1991; amd. Sec. 13, Ch. 695, L. 1991; amd. Sec. 12, Ch. 506, L. 1993; amd. Sec. 2, Ch. 10, L. 1995; amd. Sec. 12, Ch. 397, L. 1995; amd. Sec. 79, Ch. 42, L. 1997.

15-38-105. Report of gross yield from mines. A person who engages in or carries on the business of mining, extracting, or producing a mineral from any quartz vein or lode, placer claim, dump or tailings, or other place or source shall file an annual statement of gross yield of the mineral from each mine owned or worked by that person during the calendar year. This statement must be in the form prescribed by the department and must be signed by the person or the manager, superintendent, agent, president, or vice-president of the corporation, association, or partnership, if any. Metal producers shall deliver the statement to the department on or before March 31 following the end of the calendar year. Mineral producers shall deliver the statement to the department on or before the 60th day following the end of the calendar year. The statement must show the following:

(1) the name and address of the owner or lessee or operator of the mine;

(2) the description and location of the mine;

(3) the quantity of minerals extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of the mineral and the total yield of the mineral from the mine in constituents of commercial value; that is to say, the number of ounces of gold or silver, pounds of copper or lead, tons of coal, or other commercially valuable constituents of the ores or mineral products or deposits yielded to the person engaged in mining measured by standard units of measurement;

(5) the gross yield or value in dollars and cents.

History: En. 84-7005 by Sec. 5, Ch. 497, L. 1973; R.C.M. 1947, 84-7005; amd. Sec. 3, Ch. 334, L. 1981; amd. Sec. 1, Ch. 226, L. 1983; amd. Sec. 6, Ch. 128, L. 1989; amd. Sec. 34, Ch. 451, L. 1995.

15-38-106. *(Temporary)* **Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit in the following order:

(a) 50% of the proceeds of the tax in the resource indemnity trust fund of the permanent fund type;

(b) $300,000 of the remaining proceeds in the ground water assessment account established by 85-2-905;

(c) 50% of the remaining proceeds in the reclamation and development grants account established by 90-2-1104; and

(d) all remaining proceeds in the orphan share account established in 75-10-743.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer.

15-38-106. *(Effective on occurrence of contingency)* **Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit in the following order:

(a) $366,000 of the proceeds of the resource indemnity and ground water assessment taxes in the ground water assessment account established by 85-2-905;

(b) 50% of the remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects;

(c) $150,000 of the remaining proceeds of the resource indemnity and ground water assessment taxes in the natural resource workers' tuition scholarship account established in 39-10-106 for the first fiscal year following July 1 immediately after the date that the governor certifies that the resource indemnity trust fund balance has reached $100 million and for succeeding fiscal years, the amount required under 39-10-106(4);

(d) all remaining proceeds in the orphan share account established in 75-10-743.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer. *(Terminates June 30, 5 years following date of occurrence of contingency—sec. 10, Ch. 586, L. 2001.)*

15-38-106. *(Effective July 1, 5 years following date of occurrence of contingency)* **Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit in the following order:

(a) $366,000 of the proceeds in the ground water assessment account established by 85-2-905;

(b) 50% of the remaining proceeds in the orphan share account established in 75-10-743; and

(c) all remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer.

History: En. 84-7007, 84-7008 by Secs. 7, 8, Ch. 497, L. 1973; R.C.M. 1947, 84-7007, 84-7008; amd. Sec. 1, Ch. 585, L. 1979; amd. Sec. 2, Ch. 226, L. 1983; amd. Sec. 4, Ch. 281, L. 1983; amd. Sec. 7, Ch. 128, L. 1989; amd. Sec. 16, Ch. 769, L. 1991; amd. Sec. 9, Ch. 455, L. 1993; amd. Secs. 1, 2, Ch. 478, L. 1993; amd. Sec. 80, Ch. 42, L. 1997; amd. Sec. 2, Ch. 415, L. 1997; amd. Sec. 11, Ch. 422, L. 1997; amd. Sec. 4, Ch. 144, L. 1999; amd. Sec. 5, Ch. 552, L. 1999; amd. Sec. 4, Ch. 34, L. 2001; amd. Sec. 7, Ch. 586, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 34 in temporary version in (2)(a) substituted "permanent fund type" for "nonexpendable trust fund type". Amendment effective July 1, 2001.

Chapter 586 in (2)(a) inserted "of the resource indemnity and ground water assessment taxes"; inserted (2)(b) depositing 50% of remaining proceeds in reclamation and development grants account; inserted (2)(c) depositing $150,000 of remaining proceeds of resource indemnity and ground water assessment taxes in natural resource workers' tuition scholarship account; in (2)(d) at beginning substituted "all" for "50% of the"; deleted former (2)(c) that read: "(c) all remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects"; and made minor changes in style. Amendment effective on occurrence of contingency.

Effective Dates — Contingency: Section 9, Ch. 586, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] is effective on July 1, 2001.

(2) [Section 7] [15-38-106] is effective on July 1 immediately following the date that the governor by executive order certifies to the secretary of state that the resource indemnity trust fund balance has reached $100 million and applies to the then-current academic year. The secretary of state shall forward a copy of the executive order to the code commissioner.

(3) [Section 4(1) [39-10-104(1)] and this section] are effective on passage and approval." Approved May 5, 2001.

Termination: Section 10, Ch. 586, L. 2001, provided: "[This act] terminates on June 30, 5 years after [the effective date provided in section 9(2)]." Effective on occurrence of contingency.

Contingent Effective Date: Section 13(2), Ch. 552, L. 1999, provided: "[Section 5 of this act] [15-38-106] is effective July 1 of the first year following the date that the governor by executive order certifies to the secretary of state that the resource indemnity trust fund balance has reached $100 million. The secretary of state shall notify the department of revenue, the department of administration, the code commissioner, and the legislative fiscal division of this certification."

Cross-References

Deficiency assessment procedure, 15-38-110.

Creation of trust fund, 15-38-201.

15-38-107. Procedure in case of failure to file statement. (1) If any person fails to make and file a statement within the time prescribed, the department shall immediately after the time has expired determine the gross yield of the mineral of the person from the business during the calendar year immediately preceding the year in which the statement is to be filed and shall fix the amount of the tax due to the state from the person for the calendar year and shall add to the amount of the tax penalty and interest as provided in 15-1-216.

(2) If a person fails to pay the tax when due, the department shall immediately determine the total gross value of product of the person from the business during the year for which the tax is due and shall fix the amount of tax due to the state and shall add to the amount penalty and interest as provided in 15-1-216.

(3) The department shall mail to the person failing to file an annual statement or pay any tax a letter setting forth the amount of tax, penalty, and interest due. The letter must advise that if payment is not received, a warrant for distraint may be filed.

(4) Penalties imposed by 15-1-216 may be waived by the department pursuant to 15-1-206.

History: En. 84-7012 by Sec. 12, Ch. 497, L. 1973; amd. Sec. 1, Ch. 301, L. 1975; amd. Sec. 11, Ch. 156, L. 1977; R.C.M. 1947, 84-7012(1) thru (3); amd. Sec. 21, Ch. 439, L. 1981; amd. Sec. 3, Ch. 226, L. 1983; amd. Sec. 8, Ch. 128, L. 1989; amd. Sec. 31, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.
Warrant for distraint, Title 15, ch. 1, part 7.

15-38-108. Warrant for distraint. If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien shall have precedence over any other claim, lien, or demand thereafter filed and recorded.

History: En. 84-7012 by Sec. 12, Ch. 497, L. 1973; amd. Sec. 1, Ch. 301, L. 1975; amd. Sec. 11, Ch. 156, L. 1977; R.C.M. 1947, 84-7012(4); amd. Sec. 22, Ch. 439, L. 1981.

15-38-109. Restricted access to records. The information furnished by the producer to the department for the purpose of this chapter must be treated as provided in 15-31-511.

History: En. Sec. 13, Ch. 497, L. 1973; R.C.M. 1947, 84-7013; amd. Sec. 3, Ch. 135, L. 1993.

15-38-110. Deficiency assessment — review — interest. (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

History: En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 19, Ch. 811, L. 1991.

15-38-111. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-38-110 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 2, Ch. 14, L. 1983.

15-38-112. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department

may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: **En. Sec. 1, Ch. 194, L. 1983.**

15-38-113. Exemption from resource indemnity and ground water assessment tax. A person who has paid the license tax on a metal mine under the provisions of Title 15, chapter 37, part 1, is exempt from the resource indemnity and ground water assessment tax.

History: **En. Sec. 11, Ch. 672, L. 1989; amd. Sec. 17, Ch. 769, L. 1991.**

15-38-114 through 15-38-120 reserved.

15-38-121. Certain royalties exempt. Exempt from taxation are royalties received by:

(1) an Indian tribe with respect to mineral production pursuant to a lease entered into under the Indian Mineral Leasing Act of 1938, 25 U.S.C. 396a through 396g;

(2) the United States as trustee for individual Indians; and

(3) the United States, the state of Montana, or a county or municipal government.

History: **En. Sec. 1, Ch. 536, L. 1989; amd. Sec. 1, Ch. 92, L. 1991; amd. Sec. 35, Ch. 451, L. 1995.**

15-38-122 through 15-38-124 reserved.

15-38-125. Gross value of product for coal. As used in this part when referring to coal, "gross value of product" is determined by multiplying the contract sales price, as defined in 15-35-102, by the tonnage produced.

History: **En. Sec. 3, Ch. 520, L. 1991.**

15-38-126. Gross value of product for talc. As used in this part, when referring to talc, "gross value of product" is the gross yield or value of talc as determined in 15-23-515(2).

History: **En. Sec. 2, Ch. 531, L. 1989.**

15-38-127. Gross value of product for vermiculite. As used in this part, when referring to vermiculite, "gross value of product" is the gross yield or value of vermiculite as determined in 15-23-516(2).

History: **En. Sec. 2, Ch. 695, L. 1991.**

15-38-128. Gross value of product for limestone. As used in this part, when referring to limestone, "gross value of product" is the gross yield or value as determined in 15-23-517(2).

History: **En. Sec. 2, Ch. 506, L. 1993.**

15-38-129. Gross value of product for industrial garnets and byproducts. As used in this part, when referring to industrial garnets and associated byproducts, "gross value of product" is the gross yield or value as determined in 15-23-518(2).

History: **En. Sec. 2, Ch. 397, L. 1995.**

15-38-130 through 15-38-135 reserved.

15-38-136. Terminated. Sec. 39, Ch. 15, Sp. L. July 1992.

History: **En. Sec. 9, Ch. 15, Sp. L. July 1992; amd. Sec. 10, Ch. 455, L. 1993.**

Part 2
Resource Indemnity Trust Fund

15-38-201. Creation of resource indemnity trust fund. For the purpose of carrying out this chapter, there is a resource indemnity trust fund in the amount of $100 million. The resource indemnity trust fund must be credited with all money received as provided in this chapter.

History: **En. 84-7004 by Sec. 4, Ch. 497, L. 1973; R.C.M. 1947, 84-7004; amd. Sec. 5, Ch. 281, L. 1983; amd. Sec. 81, Ch. 42, L. 1997; amd. Sec. 1, Ch. 444, L. 1997.**

15-38-202. *(Temporary)* **Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches $100 million. Thereafter, all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, to be deposited into the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs. Any amount of the appropriation in this subsection (2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a permanent fund account, the income from which may be used for the purposes provided in this subsection.

(ii) $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants;

(iv) $300,000 to be deposited into the ground water assessment account created by 85-2-905; and

(v) $500,000 to the department of fish, wildlife, and parks for the purposes of 87-1-283. The future fisheries review panel shall approve and fund qualified mineral reclamation projects before other types of qualified projects.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session. *(Terminates July 1, 2009—sec. 9, Ch. 529, L. 1999.)*

15-38-202. *(Effective July 1, 2009)* **Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches $100 million. Thereafter, all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, to be deposited into the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs. Any amount of the appropriation in this subsection (2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a permanent fund account, the income from which may be used for the purposes provided in this subsection.

(ii) $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants; and

(iv) $300,000 to be deposited into the ground water assessment account created by 85-2-905.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session. *(Terminates June 30, 2014—sec. 5, Ch. 497, L. 1999.)*

15-38-202. *(Effective July 1, 2014)* **Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches $100 million. Thereafter, all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(ii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants; and

(iii) $300,000 to be deposited into the ground water assessment account created by 85-2-905.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session.

History: En. 84-7009 by Sec. 9, Ch. 497, L. 1973; R.C.M. 1947, 84-7009; amd. Sec. 44, Ch. 505, L. 1981; amd. Sec. 6, Ch. 241, L. 1983; amd. Sec. 6, Ch. 281, L. 1983; amd. Sec. 1, Ch. 716, L. 1985; amd. Sec. 1, Ch. 408, L. 1987; amd. Secs. 12, 18, Ch. 418, L. 1987; amd. Secs. 1, 5, Ch. 555, L. 1987; amd. Sec. 1, Ch. 530, L. 1989; amd. Sec. 12, Ch. 672, L. 1989; amd. Secs. 3, 4, Ch. 478, L. 1993; amd. Sec. 12, Ch. 613, L. 1993; amd. Sec. 36, Ch. 451, L. 1995; amd. Sec. 2, Ch. 577, L. 1995; amd. Sec. 82, Ch. 42, L. 1997; amd. Sec. 3, Ch. 415, L. 1997; amd. Sec. 2, Ch. 444, L. 1997; amd. Sec. 5, Ch. 144, L. 1999; amd. Secs. 1, 2, Ch. 497, L. 1999; amd. Sec. 3, Ch. 529, L. 1999; amd. Sec. 5, Ch. 34, L. 2001; amd. Sec. 2, Ch. 61, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: (Temporary version and version effective July 1, 2009) Chapter 34 in second sentence of (2)(a)(i) after "deposited in a" substituted "permanent fund account" for "nonexpendable trust account". Amendment effective July 1, 2001.

Chapter 61 in (1) in second sentence inserted "excluding unrealized gains and losses" and inserted "balance, excluding unrealized gains and losses" and in third sentence in two places inserted "excluding unrealized gains and losses"; and made minor changes in style. Amendment effective March 16, 2001.

Cross-References

Resource indemnity trust, Art. IX, sec. 2, Mont. Const.

Board of Investments, 2-15-1808.

Payment into grant program special revenue account, 75-1-1102.

Use of funds to reclaim abandoned wells or holes, 82-10-402.

15-38-203. Purpose of fund usage — limitation on future use. (1) Any funds made available under this chapter must be used and expended to improve the total environment and rectify damage to the environment.

(2) It is the intent of the legislature that future appropriations from the resource indemnity trust interest not be made to fund general operating expenses of state agencies.

History: En. 84-7010 by Sec. 10, Ch. 497, L. 1973; R.C.M. 1947, 84-7010; (2)En. Sec. 7, HB 922, L. 1985; amd. Sec. 3, Ch. 444, L. 1997.

CHAPTERS 39 THROUGH 43
RESERVED

CHAPTER 44
FOREST LANDS TAX

Part 1 — General Provisions

15-44-101. Short title.
15-44-102. Definitions.
15-44-103. Legislative intent — value of forest lands — valuation zones.
15-44-104. Reduction in valuation on forest lands for trees destroyed by natural disaster.
15-44-105. Administration — rules.

Part 1
General Provisions

15-44-101. Short title. This part may be cited as the "Forest Lands Tax Act".
History: En. Sec. 1, Ch. 783, L. 1991.

15-44-102. Definitions. For the purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Culmination of mean annual increment" means the point of optimum net wood production on an acre of forest land.

(2) "Cultivated Christmas trees" means Christmas trees that are grown on land prepared by intensive cultivation and tilling, such as by plowing or turning over the soil, and on which all unwanted plant growth is controlled for the exclusive purpose of raising Christmas trees.

(3) "Department" means the department of revenue.

(4) "Forest" means forest land and the timber on the land.

(5) "Forest land" means contiguous land of 15 acres or more in one ownership that is capable of producing timber that can be harvested in commercial quantity and is producing timber unless the trees have been removed by man through harvest, including clearcuts, or by natural disaster, including but not limited to fire. Forest land includes land:

(a) that has not been converted to another use; and

(b) on which the annual net wood production equals or exceeds 25 cubic feet an acre at the culmination of mean annual increment.

(6) "Forest productivity value" means the value of forest land for assessment purposes, which value is determined only on the basis of its potential to produce timber, other forest products, and associated agricultural products through an income approach provided for in 15-44-103.

(7) "Harvest" means an activity related to the cutting or removal of timber for use or sale as a forest product.

(8) "Landowner" means an individual, corporation, association, company, firm, joint venture, syndicate, or trust.

(9) "Mean annual net wood production" means the average net usable volume of wood that 1 acre of forest land will grow in 1 year under average current and actual forest conditions and under current and reasonable management practices for each forest valuation zone established under 15-44-103.

(10) "Stumpage value" means the amount that timber would sell for under an arm's-length transaction made in the ordinary course of business, expressed in terms of dollars per unit of measure.

(11) "Timber" means all wood growth on privately owned land, mature or immature, alive or dead, standing or down, that is capable of furnishing raw material used in the manufacture of lumber or other forest products. The term does not include cultivated Christmas trees.

History: **En. Sec. 2, Ch. 783, L. 1991; amd. Sec. 2, Ch. 297, L. 1997.**

15-44-103. Legislative intent — value of forest lands — valuation zones. (1) In order to encourage landowners of private forest lands to retain and improve their holdings of forest lands, to promote better forest practices, and to encourage the investment of capital in reforestation, forest lands must be classified and assessed under the provisions of this section.

(2) The forest productivity value of forest land must be determined by:

(a) capitalizing the value of the mean annual net wood production at the culmination of mean annual increment plus other agriculture-related income, if any; less

(b) annualized expenses, including but not limited to the establishment, protection, maintenance, improvement, and management of the crop over the rotation period.

(3) To determine the forest productivity value of forest lands, the department shall:

(a) divide the state into appropriate forest valuation zones, with each zone designated so as to recognize the uniqueness of marketing areas, timber types, growth rates, access, operability, and other pertinent factors of that zone; and

(b) establish a uniform system of forest land classification that takes into consideration the productive capacity of the site to grow forest products and furnish other associated agricultural uses.

(4) In computing the forest land valuation schedules for each forest valuation zone to take effect on January 1, 1994, the department shall determine the productive capacity value of all forest lands in each forest valuation zone using the formula $V = I/R$, where:

(a) V is the per-acre forest productivity value of the forest land;

(b) I is the per-acre net income of forest lands in each valuation zone and is determined by the department using the formula $I = (M \times SV) + AI - C$, where:

(i) I is the per-acre net income;

(ii) M is the mean annual net wood production;

(iii) SV is the stumpage value;

(iv) AI is the per-acre agriculture-related income; and

(v) C is the per-unit cost of the forest product and agricultural product produced, if any; and

(c) R is the capitalization rate determined by the department as provided in subsection (6).

(5) Net income must:

(a) be calculated for each year of a base period, which is the most recent 5-year period for which data is available;

(b) be based on a rolling average of stumpage value of timber harvested within the forest valuation zone and on the associated production cost data for the base period from sources considered appropriate by the department; and

(c) include agriculture-related net income for the same time period as the period used to determine average stumpage values.

(6) The capitalization rate must be calculated for each year of the base period and is the annual average interest rate on agricultural loans as reported by the Northwest farm credit services, agricultural credit association of Spokane, Washington, plus the effective tax rate.

(7) The effective tax rate must be calculated for each year of the base period by dividing the total estimated tax due on forest lands subject to the provisions of this section by the total forest value of those lands.

(8) For the purposes of this section, if forest service sales are used in the determination of stumpage values, the department shall take into account purchaser road credits.

(9) In determining the forest productivity value of forest lands and in computing the forest land valuation schedules, the department shall use information and data provided by the university of Montana-Missoula.

History: **En. Sec. 3, Ch. 783, L. 1991; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 3, Ch. 297, L. 1997.**

15-44-104. Reduction in valuation on forest lands for trees destroyed by natural disaster. (1) Forest lands upon which, at any time after December 31, 1993, trees are destroyed by fire, disease, insect infestation, or other natural disaster so that the lands affected will not meet minimum stocking requirements are eligible for a reduction in value for the first 20 tax years following the loss.

(2) If a landowner shows to the department's satisfaction that the landowner's forest lands have been destroyed as provided in subsection (1), the department shall reduce the value of the forest land by 50% of the original forest productivity value per year.

History: En. Sec. 4, Ch. 783, L. 1991.

15-44-105. Administration — rules. The department shall:

(1) administer and enforce the provisions of this part;

(2) arrange for the preparation and distribution of forms and information necessary to administer the provisions of this part; and

(3) promulgate rules necessary to administer and enforce the provisions of this part.

History: En. Sec. 5, Ch. 783, L. 1991.

CHAPTERS 45 THROUGH 49

RESERVED

CHAPTER 50

PUBLIC CONTRACTOR'S FEES AND TAX

Part 1 — General Provisions

15-50-101. Definitions.
15-50-102. Renumbered 37-71-102 by Code Commissioner, 1983.
15-50-103. Renumbered 37-71-103 by Code Commissioner, 1983.
15-50-104. Renumbered 37-71-104 by Code Commissioner, 1983.
15-50-105. Renumbered 37-71-105 by Code Commissioner, 1983.

Part 2 — Tax on Contractors

15-50-201. Renumbered 37-71-201 by Code Commissioner, 1983.
15-50-202. Renumbered 37-71-202 by Code Commissioner, 1983.
15-50-203. Renumbered 37-71-203 by Code Commissioner, 1983.
15-50-204. Renumbered 37-71-204 by Code Commissioner, 1983.
15-50-205. Tax imposed on gross receipts from public contracts.
15-50-206. Withholding license fee from payments — refunds.
15-50-207. Credit against other taxes — credit for personal property taxes and certain fees.
15-50-208 through 15-50-210 reserved.
15-50-211. Renumbered 37-71-211 by Code Commissioner, 1983.
15-50-212. Renumbered 37-71-212 by Code Commissioner, 1983.
15-50-213. Renumbered 37-71-213 by Code Commissioner, 1983.

Part 3 — Contractor's Tax Return

15-50-301. Rules for contractor's return.
15-50-302. Renumbered 37-71-301 by Code Commissioner, 1983.
15-50-303. Renumbered 37-71-302 by Code Commissioner, 1983, and 15-50-301(2) by Code Commissioner, 1985.
15-50-304. Statute of limitations.
15-50-305 and 15-50-306 reserved.
15-50-307. Inspection of books of contractor.
15-50-308. Estimation of tax upon failure to file statement or pay tax — notice.
15-50-309. Penalty and interest for delinquency — waiver.
15-50-310. Warrant for distraint.
15-50-311. Disposal of license taxes.

Part 1
General Provisions

15-50-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of revenue as provided in 2-15-1301.

(2) "Gross receipts" means all receipts from sources within the state, whether in the form of money, credits, or other valuable consideration, received from, engaging in, or conducting a business, without deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, taxes, losses, or any other expense whatsoever. However, gross receipts does not include cash discounts allowed and taken on sales and sales refunds, either in cash or by credit, uncollectible accounts written off from time to time, or payments received in final liquidation of accounts included in the gross receipts of any previous return made by the person.

(3) (a) "Public contractor" means any person who submits a proposal to perform or enters into a contract for performing public construction work in the state with the federal government or state of Montana; with any board, commission, or department of the state; with any board of county commissioners, any city or town council, or any agency of any of them; or with any other public board, body, commission, or agency authorized to let or award contracts for any public work when the contract cost, value, or price exceeds the sum of $5,000.

(b) The term public contractor includes subcontractors undertaking to perform work covered by the original contract or any part of the contract when the contract cost, value, or price exceeds the sum of $5,000.

History: En. Sec. 1, Ch. 195, L. 1967; amd. Sec. 12, Ch. 52, L. 1977; R.C.M. 1947, 84-3501(3); MCA 1981, 15-50-101; redes. 37-71-101 by Code Commissioner, 1983; Sec. 37-71-101(3), MCA 1983; redes. 15-50-101 by Code Commissioner, 1985; amd. Sec. 1, Ch. 558, L. 1995; amd. Sec. 37, Ch. 51, L. 1999.

15-50-102. Renumbered 37-71-102 by Code Commissioner, 1983.

15-50-103. Renumbered 37-71-103 by Code Commissioner, 1983.

15-50-104. Renumbered 37-71-104 by Code Commissioner, 1983.

15-50-105. Renumbered 37-71-105 by Code Commissioner, 1983.

Part 2
Tax on Contractors

15-50-201. Renumbered 37-71-201 by Code Commissioner, 1983.

15-50-202. Renumbered 37-71-202 by Code Commissioner, 1983.

15-50-203. Renumbered 37-71-203 by Code Commissioner, 1983.

15-50-204. Renumbered 37-71-204 by Code Commissioner, 1983.

15-50-205. Tax imposed on gross receipts from public contracts. (1) A public contractor, unless the contractor constructs or works on a federal research facility, shall pay to the department of revenue a license fee in a sum equal to 1% of the gross receipts, as defined in 15-50-101, from public contracts during the income year in which the public contractor receives payment.

(2) The license fee must be computed upon the basis of the entire contract for each separate contract let by any of the public bodies as specified in this section.

History: En. Sec. 5, Ch. 178, L. 1935; re-en. Sec. 2433.5, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967; amd. Sec. 1, Ch. 180, L. 1974; R.C.M. 1947, 84-3505(part); amd. Sec. 7, Ch. 240, L. 1983; amd. Sec. 1, Ch. 741, L. 1985; amd. Sec. 2, Ch. 558, L. 1995.

15-50-206. Withholding license fee from payments — refunds. (1) The prime contractor shall withhold the 1% license fee from payments to subcontractors and inform the department of revenue on prescribed forms of the amount of the 1% license fee in the prime contractor's account to be allocated and transferred to the subcontractor. The notification to transfer portions of the 1% license fee must be filed within 30 days after each payment is made to subcontractors. If any prime contractor fails to file the required allocation and transfer report at the time required by or under the provisions of this chapter, a penalty computed at the rate of 10% of the 1% license fee withheld from subcontractors is due from the prime contractor.

(2) The state, county, city, or any agency or department thereof, as described in 15-50-205, for whom the contractor is performing public work shall withhold, in addition to other amounts withheld as provided by law, 1% of all payments due the contractor and shall transmit that money to the department of revenue. If the 1% of gross receipts, as defined in 15-50-101, is not withheld as provided, the contractor shall make payment of these amounts to the department within 30 days after the date on which the contractor receives each increment of payment for work performed by the contractor.

(3) Any overpayment of the 1% of gross receipts, as defined in 15-50-101, withheld or paid by any contractor must be refunded by the department of revenue at the end of the income year upon written application.

History: (1)En. Sec. 5, Ch. 178, L. 1935; re-en. Sec. 2433.5, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967; amd. Sec. 1, Ch. 180, L. 1974; Sec. 84-3505, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 195, L. 1967; amd. Sec. 144, Ch. 516, L. 1973; Sec. 84-3513, R.C.M. 1947; R.C.M. 1947, 84-3505(part), 84-3513; amd. Sec. 8, Ch. 240, L. 1983; amd. Sec. 3, Ch. 558, L. 1995.

15-50-207. Credit against other taxes — credit for personal property taxes and certain fees. (1) The additional license fees withheld or otherwise paid as provided in this chapter may be used as a credit on the contractor's corporation license tax provided for in chapter 31 of this title or on the contractor's income tax provided for in chapter 30, depending upon the type of tax the contractor is required to pay under the laws of the state.

(2) Personal property taxes and the fee in lieu of tax on buses, trucks having a manufacturer's rated capacity of more than 1 ton, or truck tractors, as provided in 61-3-529, and the registration fee on light vehicles, as provided in 61-3-560 through 61-3-562, paid in Montana on any personal property or vehicle of the contractor that is used in the business of the contractor and is located within this state may be credited against the license fees required under this chapter. However, in computing the tax credit allowed by this section against the contractor's corporation license tax or income tax, the tax credit against the license fees required under this chapter may not be considered as license fees paid for the purpose of the income tax or corporation license tax credit.

History: En. Sec. 4, Ch. 195, L. 1967; R.C.M. 1947, 84-3514; amd. Sec. 22, Ch. 614, L. 1981; amd. Sec. 12, Ch. 516, L. 1985; amd. Sec. 14, Ch. 611, L. 1987; amd. Sec. 8, Ch. 496, L. 1997; amd. Sec. 11, Ch. 515, L. 1999.

Compiler's Comments

2000 Amendment by Referendum: Chapter 515, L. 1999, near middle of first sentence of (2) inserted "and the registration fee on light vehicles, as provided in 61-3-560 through 61-3-562"; and made minor changes in style. Amendment effective November 7, 2000.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

15-50-208 through 15-50-210 reserved.

15-50-211. Renumbered 37-71-211 by Code Commissioner, 1983.

15-50-212. Renumbered 37-71-212 by Code Commissioner, 1983.

15-50-213. Renumbered 37-71-213 by Code Commissioner, 1983.

Part 3
Contractor's Tax Return

15-50-301. Rules for contractor's return. The department shall establish rules requiring public contractors to file a contractor's return showing public works contracts performed during a calendar year.

History: (1)En. Sec. 5, Ch. 195, L. 1967; amd. Sec. 145, Ch. 516, L. 1973; R.C.M. 1947, 84-3515(part); (2)En. Sec. 6, Ch. 195, L. 1967; amd. Sec. 146, Ch. 516, L. 1973; R.C.M. 1947, 84-3516; Sec. 37-71-302(2), MCA 1983; redes. 15-50-301(2) by Code Commissioner, 1985; amd. Sec. 4, Ch. 108, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 108 deleted former (2) that read: "(2) A person failing to file a contractor's license return as provided and required by the department of revenue, upon conviction, shall be fined not less than $1,000 or more than $10,000"; and made minor changes in style. Amendment effective July 1, 2001.

15-50-302. Renumbered 37-71-301 by Code Commissioner, 1983.

15-50-303. Renumbered 37-71-302 by Code Commissioner, 1983, and 15-50-301(2) by Code Commissioner, 1985.

15-50-304. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a public contractor's gross receipts tax return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered filed on the last day. If the taxpayer, before the expiration of the 5-year period, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue determines the existence of the overpayment and approves the refund or credit thereof. If the taxpayer agrees in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If the return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery by the department of the fraud.

History: En. Sec. 1, Ch. 437, L. 1985.

15-50-305 and 15-50-306 reserved.

15-50-307. Inspection of books of contractor. The books and records of a public contractor must be subject to inspection by the department during reasonable hours.

History: En. Sec. 4, Ch. 558, L. 1995.

15-50-308. Estimation of tax upon failure to file statement or pay tax — notice. (1) If a person fails, neglects, or refuses to file the statement required by 15-50-206 within the time required or fails to pay the tax required by this chapter on or before the date payment is due, the department shall proceed to inform itself as best it may regarding the total gross income of the person from its contracting business within this state during the quarter.

(2) The department shall compute the amount of license taxes due from the person and shall mail to the person a letter and tax assessment statement setting forth the amount of delinquent license tax, penalty, and interest due. The letter must advise that if payment is not made, a warrant for distraint may be filed.

History: En. Sec. 5, Ch. 558, L. 1995.

15-50-309. Penalty and interest for delinquency — waiver. (1) License taxes due under this chapter become delinquent if not paid within 30 days after payment to the contractor. The department shall add to the amount of all delinquent license taxes penalty and interest as provided in 15-1-216.

(2) Penalties imposed by 15-1-216 may be waived by the department pursuant to 15-1-206.

History: En. Sec. 6, Ch. 558, L. 1995; amd. Sec. 32, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-50-310. Warrant for distraint. If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any claim, lien, or demand that is filed and recorded after the warrant is issued.

History: En. Sec. 7, Ch. 558, L. 1995.

15-50-311. Disposal of license taxes. License taxes collected under this chapter must be deposited by the department with the state treasurer, who shall credit them to the general fund of the state.

History: En. Sec. 8, Ch. 558, L. 1995.

CHAPTER 51

ELECTRICAL ENERGY PRODUCER'S LICENSE TAX

Part 1 — General Provisions

15-51-101. Rate of tax — electrical energy producers.
15-51-102. Payment of tax — may be itemized on customers' bills.
15-51-103. Disposition of revenue — penalty and interest on delinquency.
15-51-104. Inspection of books of producer.
15-51-105. Repealed.
15-51-106. Future producers to comply.
15-51-107 and 15-51-108 reserved.
15-51-109. Deficiency assessment — review — interest.
15-51-110. Credit for overpayment — interest on overpayment.
15-51-111. Procedure to compute tax in absence of statement — waiver of penalty.
15-51-112. Warrant for distraint.
15-51-113. Penalty for violation — enforcement.
15-51-114. Statute of limitations.
15-51-115 through 15-51-125 reserved.
15-51-126. Terminated.

Part 1
General Provisions

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

Tax on companies regulated by Public Service Commission to fund Consumer Counsel, 69-1-223.

15-51-101. Rate of tax — electrical energy producers. In addition to the license tax now provided by law, each person or other organization now engaged in the generation, manufacture, or production of electricity and electrical energy in the state of Montana, either through waterpower or by any other means, for barter, sale, or exchange (and hereinafter referred to as the "producer") shall on or before the 30th day after each calendar quarter, quarterly periods ending March 31, June 30, September 30, and December 31, render a statement to the department of revenue showing the gross amount, except for actual and necessary plant use, required to produce the energy of electricity and electrical energy produced, manufactured, or generated during the preceding calendar quarter without any deduction and shall pay a license tax thereon in the sum of $.0002 per kilowatt hour on all such electricity and electrical energy generated, manufactured, or produced, measured at the place of production and as shown on the statement required in the manner and within the time hereinafter provided.

History: En. Sec. 1, Ch. 51, Ex. L. 1933; re-en. Sec. 2343.1, R.C.M. 1935; amd. Sec. 1, Ch. 83, L. 1937; amd. Sec. 1, Ch. 214, L. 1957; amd. Sec. 1, Ch. 5, Ex. L. 1969; amd. Sec. 1, Ch. 391, L. 1971; amd. Sec. 69, Ch. 516, L. 1973; amd. Sec. 4, Ch. 52, L. 1977; amd. Sec. 1, Ch. 401, L. 1977; R.C.M. 1947, 84-1601.

Cross-References

Credit for loans by certain utilities for energy-saving purposes, 15-32-107.

Exemption of rural electric cooperatives, 35-18-503.

15-51-102. Payment of tax — may be itemized on customers' bills. The license tax must be remitted with the statement and paid on or before the 30th day of the month after each calendar quarter. A customer's bill or statement may contain an itemized amount of the tax imposed by 15-51-101.

History: En. Sec. 2, Ch. 51, Ex. L. 1933; re-en. Sec. 2343.2, R.C.M. 1935; amd. Sec. 2, Ch. 5, Ex. L. 1969; amd. Sec. 2, Ch. 401, L. 1977; R.C.M. 1947, 84-1602; amd. Sec. 1, Ch. 199, L. 1999; amd. Sec. 28, Ch. 556, L. 1999.

15-51-103. Disposition of revenue — penalty and interest on delinquency. The department shall, in accordance with the provisions of 15-1-501, promptly remit the collected taxes to the state treasurer. Taxes not paid on the due date are delinquent, and penalty and interest must be added to the delinquent taxes as provided in 15-1-216.

History: **En. Sec. 3, Ch. 51, Ex. L. 1933; amd. Sec. 20(F), Ch. 109, L. 1935; re-en. Sec. 2343.3, R.C.M. 1935; amd. Sec. 1, Ch. 83, L. 1937; amd. Sec. 6, Ch. 14, L. 1941; amd. Sec. 70, Ch. 516, L. 1973; amd. Sec. 3, Ch. 401, L. 1977; R.C.M. 1947, 84-1603; amd. Sec. 11, Ch. 455, L. 1993; amd. Sec. 15, Ch. 18, L. 1995; amd. Sec. 33, Ch. 427, L. 1999.**

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

Disposition of tax proceeds, 15-1-501.

15-51-104. Inspection of books of producer. The books and records of an electrical energy producer must be subject to inspection by the department during reasonable hours.

History: **En. Sec. 5, Ch. 51, Ex. L. 1933; re-en. Sec. 2343.5, R.C.M. 1935; amd. Sec. 72, Ch. 516, L. 1973; amd. Sec. 4, Ch. 401, L. 1977; R.C.M. 1947, 84-1605; amd. Sec. 124, Ch. 27, Sp. L. November 1993.**

15-51-105. Repealed. Sec. 35, Ch. 581, L. 1979.

History: **En. Sec. 8, Ch. 51, Ex. L. 1933; re-en. Sec. 2343.8, R.C.M. 1935; amd. Sec. 74, Ch. 516, L. 1973; amd. Sec. 6, Ch. 126, L. 1977; R.C.M. 1947, 84-1608.**

15-51-106. Future producers to comply. Any producer of electricity or electrical energy referred to in 15-51-101 who shall hereafter engage in the generation, production, or manufacture of electricity or electrical energy shall immediately upon purchasing or acquiring the plant or installing equipment therefor comply with the requirements of this chapter.

History: **En. Sec. 7, Ch. 51, Ex. L. 1933; amd. Sec. 1, Ch. 20, L. 1935; re-en. Sec. 2343.7, R.C.M. 1935; R.C.M. 1947, 84-1607.**

15-51-107 and 15-51-108 reserved.

15-51-109. Deficiency assessment — review — interest. (1) When the department determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest on any deficiency assessment must be computed as provided in 15-1-216.

History: **En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 20, Ch. 811, L. 1991; amd. Sec. 34, Ch. 427, L. 1999.**

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-51-110. Credit for overpayment — interest on overpayment. (1) If the department determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest must be allowed on overpayments at the same rate as provided in 15-1-216 due from the due date of the return or from the date of overpayment, whichever is later, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest may not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this chapter may not be considered an overpayment with respect to which interest is allowable.

History: **En. Sec. 2, Ch. 14, L. 1983; amd. Sec. 35, Ch. 427, L. 1999.**

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-51-111. Procedure to compute tax in absence of statement — waiver of penalty. (1) If any person fails to file any statement required by 15-51-101 within the time required, the department shall, after the time has expired, determine the number of KWH produced by the person in this state during the quarter and compute the amount of taxes due to the state from the person for the quarter and add penalty and interest as required by 15-1-216. The department shall mail to the person required to file a quarterly report and pay the tax a letter setting forth the amount of tax, penalty, and interest due, and the letter must contain a statement that if payment is not made, a warrant for distraint may be filed.

(2) A penalty imposed by 15-1-216 may be waived by the department pursuant to 15-1-206.

History: En. 84-1610 by Sec. 5, Ch. 401, L. 1977; R.C.M. 1947, 84-1610; amd. Sec. 28, Ch. 581, L. 1979; amd. Sec. 23, Ch. 439, L. 1981; amd. Sec. 36, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-51-112. Warrant for distraint. If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded.

History: En. 84-1611 by Sec. 6, Ch. 401, L. 1977; R.C.M. 1947, 84-1611; amd. Sec. 24, Ch. 439, L. 1981.

15-51-113. Penalty for violation — enforcement. Any producer referred to in 15-51-101 who shall violate any of the provisions of this chapter or who shall fail to pay the license tax herein provided for or any part thereof when due shall be liable for three times the amount of the unpaid or delinquent tax in a civil action instituted for that purpose in a court of competent jurisdiction in the name of the state of Montana, and in such suit, upon application of the state, an injunction may be issued, without requiring any bond, restraining the defendant from continuing to produce electricity or electrical energy so long as the tax due hereunder from said defendant remains delinquent.

History: En. Sec. 9, Ch. 51, Ex. L. 1933; re-en. Sec. 2343.9, R.C.M. 1935; R.C.M. 1947, 84-1609.

Cross-References

Execution of judgment, Title 25, ch. 13.

15-51-114. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

15-51-115 through 15-51-125 reserved.

15-51-126. Terminated. Sec. 39(4), Ch. 15, Sp. L. July 1992.

History: En. Sec. 10, Ch. 15, Sp. L. July 1992.

CHAPTER 52

COLLECTION OF TRANSPORTATION AND COMMUNICATIONS LICENSE TAXES

(Repealed. Sec. 22, Ch. 294, L. 1979)

Chapter Compiler's Comments

Histories of Repealed Sections:

15-52-101 through 15-52-103. En. 84-7701, 84-7702, 84-7705 by Secs. 1, 2, 3, Ch. 36, L. 1977; R.C.M. 1947, 84-7701, 84-7702, 84-7705.

CHAPTER 53

RETAIL TELECOMMUNICATIONS EXCISE TAX

Part 1 — General Provisions

15-53-101. Repealed.
15-53-102. Repealed.
15-53-103. Repealed.
15-53-104. Repealed.
15-53-105. Repealed.
15-53-106. Repealed.
15-53-107 through 15-53-110 reserved.
15-53-111. Repealed.
15-53-112. Repealed.
15-53-113. Repealed.
15-53-114. Repealed.
15-53-115. Repealed.
15-53-116 through 15-53-125 reserved.
15-53-126. Terminated.
15-53-127. Short title.
15-53-128. Legislative findings and declaration of purpose.
15-53-129. Definitions.
15-53-130. Imposition of retail telecommunications excise tax — rate.
15-53-131 through 15-53-134 reserved.
15-53-135. Separate statement of tax — no advertising to absorb or refund tax.
15-53-136. Multistate exemption.
15-53-137. Application for permission to report on accrual basis.
15-53-138. Rural telephone cooperatives and rural electric cooperatives — subject to excise tax.
15-53-139. Return required of telecommunications services providers.
15-53-140. Credit for taxes paid on worthless account — taxes paid if account collected.
15-53-141 through 15-53-144 reserved.
15-53-145. Deficiency assessment — review — interest — penalty.
15-53-146. Credit for overpayment — interest on overpayment.
15-53-147. Penalty and interest for delinquency — waiver.
15-53-148. Estimation of tax upon failure to file return — notice.
15-53-149. Warrant for distraint.
15-53-150. Statute of limitations.
15-53-151 through 15-53-154 reserved.
15-53-155. Administration — rules.
15-53-156. Retail telecommunications excise tax revenue.

Part 2 — Tax Credit

15-53-201. Advanced telecommunications infrastructure tax credit — definitions.
15-53-202. Advanced telecommunications infrastructure tax credit — temporary suspension.
15-53-203. Application to department — competitive grants — rulemaking.

Chapter Cross-References

Disposition of tax proceeds, 15-1-501.

Tax on companies regulated by Public Service Commission to fund Consumer Counsel, 69-1-223.

Part 1
General Provisions

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-53-101. Repealed. Sec. 40, Ch. 426, L. 1999.

History: En. Sec. 1, Ch. 94, L. 1937; amd. Sec. 1, Ch. 41, L. 1947; amd. Sec. 1, Ch. 213, L. 1957; amd. Sec. 1, Ch. 7, Ex. L. 1969; amd. Sec. 1, Ch. 326, L. 1971; R.C.M. 1947, 84-2601; amd. Sec. 1, Ch. 742, L. 1991; amd. Sec. 1, Ch. 535, L. 1999.

15-53-102. Repealed. Sec. 40, Ch. 426, L. 1999.

History: En. Sec. 2, Ch. 94, L. 1937; amd. Sec. 2, Ch. 213, L. 1957; amd. Sec. 2, Ch. 7, Ex. L. 1969; amd. Sec. 2, Ch. 326, L. 1971; amd. Sec. 138, Ch. 516, L. 1973; R.C.M. 1947, 84-2602; amd. Sec. 1, Ch. 294, L. 1979; amd. Sec. 2, Ch. 742, L. 1991.

15-53-103. Repealed. Sec. 40, Ch. 426, L. 1999.

History: En. Sec. 5, Ch. 94, L. 1937; amd. Sec. 140, Ch. 516, L. 1973; R.C.M. 1947, 84-2605.

15-53-104. Repealed. Sec. 40, Ch. 426, L. 1999.

History: En. Sec. 3, Ch. 94, L. 1937; amd. Sec. 139, Ch. 516, L. 1973; R.C.M. 1947, 84-2603.

15-53-105. Repealed. Sec. 40, Ch. 426, L. 1999.

History: En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 2, Ch. 676, L. 1991; amd. Sec. 3, Ch. 742, L. 1991; amd. Sec. 21, Ch. 811, L. 1991; amd. Sec. 37, Ch. 427, L. 1999.

15-53-106. Repealed. Sec. 40, Ch. 426, L. 1999.

History: En. Sec. 2, Ch. 14, L. 1983; amd. Sec. 38, Ch. 427, L. 1999.

15-53-107 through 15-53-110 reserved.

15-53-111. Repealed. Sec. 40, Ch. 426, L. 1999.

History: En Sec. 2, Ch. 294, L. 1979; amd. Sec. 3, Ch. 676, L. 1991; amd. Sec. 4, Ch. 742, L. 1991; amd. Sec. 39, Ch. 427, L. 1999.

15-53-112. Repealed. Sec. 40, Ch. 426, L. 1999.

History: En Sec. 3, Ch. 294, L. 1979; amd. Sec. 25, Ch. 439, L. 1981.

15-53-113. Repealed. Sec. 40, Ch. 426, L. 1999.

History: En Sec. 4, Ch. 294, L. 1979; amd. Sec. 26, Ch. 439, L. 1981.

15-53-114. Repealed. Sec. 40, Ch. 426, L. 1999.

History: En Sec. 5, Ch. 294, L. 1979; amd. Sec. 12, Ch. 455, L. 1993; amd. Sec. 16, Ch. 18, L. 1995.

15-53-115. Repealed. Sec. 40, Ch. 426, L. 1999.

History: En. Sec. 1, Ch. 194, L. 1983.

15-53-116 through 15-53-125 reserved.

15-53-126. Terminated. Sec. 39(4), Ch. 15, Sp. L. July 1992.

History: En. Sec. 11, Ch. 15, Sp. L. July 1992.

15-53-127. Short title. This part may be cited as the “Retail Telecommunications Excise Tax Act”.

History: En. Sec. 1, Ch. 426, L. 1999.

15-53-128. Legislative findings and declaration of purpose. (1) The legislature finds that one measure of the state’s economic competitiveness is the presence of an efficient and affordable telecommunications infrastructure using the latest technological advancements.

(2) The legislature further finds that the telecommunications industry is undergoing a dramatic change that is altering the identity of its participants, the nature of services that the industry provides, and the methods used to deliver those services.

(3) The legislature further finds that the existing method of property taxation of the telecommunications industry results in competitive inequities that hinder the investment in the state’s telecommunications infrastructure.

(4) The legislature further finds that the evolving nature of the telecommunications industry necessitates changes to the existing system of property taxation that include reducing

the tax rate applied to telecommunications property and imposing a replacement tax in order to:

(a) avoid placing telecommunications services providers at a competitive advantage or disadvantage;

(b) provide purchasers of telecommunications services with greater choices and lower retail prices; and

(c) preserve the revenue base of the existing property tax system for taxing jurisdictions in the state.

(5) The legislature further finds that a reduction in property tax rates applied to telecommunications services providers should be replaced with an excise tax on the purchasers of telecommunications services.

(6) The legislature further finds that taxes imposed on the telecommunications industry are in reality hidden taxes that are passed on to telecommunications customers in the form of higher prices and that such a policy is contrary to the principles of open government and a fully informed citizenry on the tax policies of the state.

(7) The legislature therefore declares that there is a compelling public need to modify the existing system of property taxation of telecommunications services providers and to impose a retail telecommunications excise tax measured by the price of retail telecommunications on the purchaser to ensure competitive neutrality and constancy of revenue to taxing jurisdictions in the state of Montana.

(8) The legislature further declares that to avoid additional competitive advantages or disadvantages, the telephone company license tax must be eliminated.

History: En. Sec. 2, Ch. 426, L. 1999.

15-53-129. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Customer" or "purchaser" means a person who acquires for consideration retail telecommunications services for use or consumption and not for resale.

(2) "Retail telecommunications" means the two-way transmission of voice, image, data, or other information over wire, cable, fiber optics, microwave, radio, satellite, or similar facilities that originates or terminates in this state and is billed to a customer with a Montana service address. The term includes but is not limited to local exchange, long-distance, two-way paging, wireless telephony, and related services.

(3) (a) "Sales price" means the consideration paid for the distribution, supply, furnishing, sale, transmission, or delivery of retail telecommunications services to the end-user customer.

(b) Sales price does not include:

(i) an amount added to the customer's bill because of a charge made pursuant to the tax imposed by this part;

(ii) charges added to a customer's bill under 10-4-201, 53-19-311 and 69-3-844;

(iii) federal excise taxes or other federally imposed charges or fees collected for and remitted to a federal government entity;

(iv) a charge for a dishonored check;

(v) a finance or credit charge, penalty or charge for delayed payment, or discount for prompt payment;

(vi) a charge for construction or relocation of facilities;

(vii) the installation, repair, inspection, or servicing of equipment and wiring located on customer premises;

(viii) bad debt;

(ix) a charge added by a hotel, motel, or similar facility for telecommunications services used in placing calls for guests;

(x) charges paid by inserting coins in coin-operated telecommunications devices; and

(xi) charges for telecommunications services that have been prepaid by a prepaid calling card that enables the origination of calls by using an access number or authorization code.

(4) "Service address" means:

(a) the location from where the retail telecommunications services originated or where the retail telecommunications services are received; or

(b) where there is not a defined location, the location in Montana where the statement of charges for retail telecommunications services is mailed.

(5) "Telecommunications services provider" means a person providing retail telecommunications services.

History: En. Sec. 3, Ch. 426, L. 1999; amd. Sec. 1, Ch. 484, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 484 in definition of sales price in (b)(iii) at end after "charges or fees" inserted "collected for and remitted to a federal government entity", in (b)(vi) substituted "construction" for "reconnection of service or for replacement of service", and in (b)(vii) near beginning inserted "installation" and after "servicing of equipment" inserted "and wiring"; and made minor changes in style. Amendment effective April 30, 2001.

Applicability: Section 4, Ch. 484, L. 2001, provided: "[This act] applies to federal subscriber line charges and other federally authorized charges and fees collected but not remitted to a federal governmental entity by the telecommunications carrier and to retail telecommunications installation and activation charges made only after June 30, 2001."

15-53-130. Imposition of retail telecommunications excise tax — rate. An excise tax of 3.75% is imposed on the sales price of retail telecommunications services. The tax is imposed on the purchaser and must be collected by the telecommunications services provider.

History: En. Sec. 4, Ch. 426, L. 1999.

15-53-131 through 15-53-134 reserved.

15-53-135. Separate statement of tax — no advertising to absorb or refund tax. (1) The excise tax imposed by this part must be separately stated on the end-user customer's bill or statement.

(2) A telecommunications services provider may not advertise, hold out, or state to the public or to any customer that the tax imposed by this part will be absorbed or refunded.

History: En. Sec. 5, Ch. 426, L. 1999.

15-53-136. Multistate exemption. A customer, upon proof that the customer has paid a tax in another state on the consumption or use of retail telecommunications services, is allowed a credit against the tax imposed by this part if the tax has been paid to another state.

History: En. Sec. 6, Ch. 426, L. 1999.

15-53-137. Application for permission to report on accrual basis. (1) A telecommunications services provider may apply to the department for permission to report and pay the retail telecommunications excise tax on an accrual basis.

(2) The application must be made on a form, prescribed by the department, that contains information that the department may reasonably require.

(3) A telecommunications services provider may not report or pay the retail telecommunications excise tax on an accrual basis unless the telecommunications services provider has received written permission from the department.

History: En. Sec. 7, Ch. 426, L. 1999.

15-53-138. Rural telephone cooperatives and rural electric cooperatives — subject to excise tax. (1) Rural telephone cooperatives or rural electric cooperatives providing retail telecommunications services in an area served by an incumbent local exchange carrier, as defined in 69-3-803, that is not a cooperative shall collect the retail telecommunications excise tax imposed by this part from customers in the incumbent local exchange carrier's service area.

(2) An incumbent local exchange carrier that is not a cooperative providing retail telecommunications services in an area served by a rural telephone cooperative is not required to collect the retail telecommunications excise tax imposed by this part from customers in the rural telephone cooperative service area.

History: En. Sec. 8, Ch. 426, L. 1999.

15-53-139. Return required of telecommunications services providers. (1) A return, on a form approved by the department, and payment of the tax for the preceding calendar quarter must be filed with the department on or before 60 days after the end of each calendar quarter in which the tax imposed by this part is payable. Each telecommunications services provider engaged in providing retail telecommunications services in this state that is subject to tax under this part shall file a return.

(2) Each telecommunications services provider liable to collect the tax under this part shall keep a record, on a form approved by the department, of all revenue received from providing retail telecommunications services for each quarter.

(3) The department may grant a reasonable extension of time for filing the return upon good cause shown.

History: En. Sec. 9, Ch. 426, L. 1999.

15-53-140. Credit for taxes paid on worthless account — taxes paid if account collected. (1) The retail telecommunications excise taxes paid on an accrual basis by a telecommunications services provider filing a return under 15-53-139 on sales found to be worthless and actually deducted by the person as bad debt for federal income tax purposes may be credited on a subsequent payment of the tax.

(2) If the accounts are subsequently collected, the retail telecommunications excise tax must be paid on the amount collected.

History: En. Sec. 10, Ch. 426, L. 1999.

15-53-141 through 15-53-144 reserved.

15-53-145. Deficiency assessment — review — interest — penalty. (1) If the department determines that the amount of tax due is greater than the amount reported, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek a review of the determination pursuant to 15-1-211.

(2) (a) Interest on any deficiency must bear interest until paid at a rate of 1% a month or fraction of a month, computed from the original due date of the return.

(b) If payment is not made within 60 days, the tax is delinquent and a penalty of 10% must be added to the amount of the deficiency.

History: En. Sec. 11, Ch. 426, L. 1999.

15-53-146. Credit for overpayment — interest on overpayment. (1) If the department determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of overpayment must be credited against any tax, penalty, or interest then due from the taxpayer, with the balance being refunded to the taxpayer or its successor through reorganization, merger, consolidation, or its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest must be allowed on overpayments at the same rate as is charged on deficiency assessments under 15-53-145 due from the date of the return or from the date of overpayment, whichever date is later, to the date on which the department approves crediting or refunding the payment.

(3) (a) Interest may not accrue during any period of processing a claim for a refund delayed more than 30 days by reason of failure of the taxpayer to provide information requested by the department for the purposes of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is credited or refunded within 6 months from the date on which the return is due or from the date on which the return is filed, whichever date is later; or

(ii) if the amount of interest is less than $1.

History: En. Sec. 12, Ch. 426, L. 1999.

15-53-147. Penalty and interest for delinquency — waiver. (1) Taxes due under this part become delinquent if not paid within 60 days after the end of each calendar quarter. The department shall add to the amount of all delinquent retail telecommunications excise taxes penalty and interest, as provided in 15-1-216.

(2) Penalty and interest, as provided in 15-1-216, may be waived by the department if reasonable cause for the failure to file the return, as required by 15-53-139, or to pay the tax due is provided to the department.

History: En. Sec. 13, Ch. 426, L. 1999; amd. Sec. 5, Ch. 108, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 108 in (1) at end of second sentence substituted "penalty and interest, as provided in 15-1-216" for "a penalty of 10% of the excise tax due plus interest at the rate of 1% a month or fraction of a month, computed from the date on which the tax becomes delinquent to the date of payment"; and in (2) at beginning substituted "Penalty and interest, as provided in 15-1-216" for "The 10% penalty". Amendment effective July 1, 2001.

15-53-148. Estimation of tax upon failure to file return — notice. (1) If a telecommunications services provider fails, neglects, or refuses to file the return required by 15-53-139 within the time required or fails to pay the tax required by this part within the period provided for in 15-53-139, the department shall estimate the amount of revenue of the telecommunications services provider subject to tax under this part during the preceding quarter.

(2) The department shall compute the amount of excise tax due from the telecommunications services provider and mail to the telecommunications services provider a letter and tax assessment statement setting forth the amount of delinquent excise tax, penalty, and interest due. The letter must advise that if payment is not made, a warrant for distraint may be filed.

History: En. Sec. 14, Ch. 426, L. 1999.

15-53-149. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any claim, lien, or demand filed after the department files the warrant for distraint.

History: En. Sec. 15, Ch. 426, L. 1999.

15-53-150. Statute of limitations. (1) Except as otherwise provided in this section, a deficiency may not be assessed or collected with respect to the year for which a return is filed unless a notice of additional tax proposed to be assessed is mailed within 5 years from the date on which the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered filed on the last day. If the taxpayer, before the expiration of the period prescribed for the assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period, the taxpayer files a claim for refund or the department has determined the existence of the overpayment and has approved the refund or credit of the overpayment. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a refund or credit allowed if a claim is not filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If the return is required and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 16, Ch. 426, L. 1999.

15-53-151 through 15-53-154 reserved.

15-53-155. Administration — rules. The department shall:

(1) administer and enforce the provisions of this part;

(2) cause to be prepared and distributed forms and information that may be necessary to administer the provisions of this part; and

(3) adopt rules that may be necessary or appropriate to administer and enforce the provisions of this part.

History: En. Sec. 17, Ch. 426, L. 1999.

15-53-156. Retail telecommunications excise tax revenue. After retaining an allowance for refunds, retail telecommunications excise tax revenue collected by the department must be deposited in the state general fund.

History: En. Sec. 18, Ch. 426, L. 1999; amd. Sec. 170(1)(a)(ii), Ch. 584, L. 1999.

Part 2
Tax Credit

15-53-201. *(Temporary)* **Advanced telecommunications infrastructure tax credit — definitions.** As used in this part, the following definitions apply:

(1) "Advanced telecommunications infrastructure" means high-speed, dedicated or switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

(2) "Department" means the department of commerce.

(3) "Telecommunications services provider" means a provider of telecommunications services that is registered with the state and owns or will construct advanced telecommunications infrastructure in this state. *(Terminates July 1, 2004—sec. 8, Ch. 534, L. 1999.)*

History: En. Sec. 1, Ch. 534, L. 1999.

15-53-202. *(Temporary)* **Advanced telecommunications infrastructure tax credit — temporary suspension.** (1) Except as provided in subsection (4), there is allowed a tax credit against the tax imposed by part 1 of this chapter for advanced telecommunications infrastructure improvements in the state made by a telecommunications services provider in an amount equal to 20% of the total amount of the infrastructure investment.

(2) The tax credit provided for in subsection (1) may not exceed a total of $2 million for all qualified telecommunications services providers in any consecutive 12-month period.

(3) There is no carryback or carryforward of the credit allowed under this section, and the credit must be applied in the year the advanced telecommunications infrastructure improvements were made and may not be refunded if the taxpayer has no tax liability.

(4) The credit allowed under this section may not be claimed for investments in advanced telecommunications infrastructure improvements made after June 30, 2001, and before July 1, 2003. *(Terminates July 1, 2003—sec. 5, Ch. 484, L. 2001.)*

15-53-202. *(Temporary — effective July 1, 2003)* **Advanced telecommunications infrastructure tax credit.** (1) There is allowed a tax credit against the tax imposed by part 1 of this chapter for advanced telecommunications infrastructure improvements in the state made by a telecommunications services provider in an amount equal to 20% of the total amount of the infrastructure investment.

(2) The tax credit provided for in subsection (1) may not exceed a total of $2 million for all qualified telecommunications services providers in any consecutive 12-month period.

(3) There is no carryback or carryforward of the credit allowed under this section, and the credit must be applied in the year the advanced telecommunications infrastructure improvements were made and may not be refunded if the taxpayer has no tax liability. *(Terminates July 1, 2004—sec. 8, Ch. 534, L. 1999.)*

History: En. Sec. 2, Ch. 534, L. 1999; amd. Sec. 4, Ch. 534, L. 1999; amd. Sec. 2, Ch. 484, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 484 in (1) at beginning inserted exception clause; inserted (4) regarding claim of credit for certain investments; and made minor changes in style. Amendment effective April 30, 2001, and terminates July 1, 2003.

Applicability: Section 4, Ch. 484, L. 2001, provided: "[This act] applies to federal subscriber line charges and other federally authorized charges and fees collected but not remitted to a federal governmental entity by the telecommunications carrier and to retail telecommunications installation and activation charges made only after June 30, 2001."

15-53-203. *(Temporary)* **Application to department — competitive grants — rulemaking.** (1) In order to receive a credit against the tax imposed by part 1 of this chapter, a telecommunications services provider shall apply to the department for consideration through a competitive grant program and certify that the proposed advanced telecommunications infrastructure project provides for improved telecommunications services access to a majority of customers in an unserved or underserved area and meets other requirements as established by the department.

(2) The application to the department must include:

(a) a description of the advanced telecommunications infrastructure improvement project, including:

(i) expected costs and timelines for completing the project;

(ii) partnerships, consortiums, and interconnection agreements, if necessary, to complete the project; and

(iii) the area in which the advanced telecommunications infrastructure improvements are to be installed and the customers who will be served; and

(b) verification that the advanced telecommunications infrastructure improvements will contribute to greater access to advanced telecommunications services and enhance existing telecommunications infrastructure.

(3) The department shall adopt rules establishing a policy for granting telecommunications services providers an infrastructure tax credit. The rules must consider whether the advanced telecommunications infrastructure improvements:

(a) significantly enhance individual and business access to advanced telecommunications services at an economically reasonable cost;

(b) promote the development and transition to a fully competitive telecommunications marketplace;

(c) improve public and private K-12, university, and library access to advanced telecommunications services;

(d) are required to improve connections between communities in the state; and

(e) increase Montana health care systems' access to interactive telecommunications services.

(4) When the department has determined which telecommunications services providers qualify under the rules established in subsection (3), it shall notify the department of revenue of the telecommunications services providers that are eligible to receive the tax credit pursuant to 15-53-202. *(Terminates July 1, 2004—sec. 8, Ch. 534, L. 1999.)*

History: En. Sec. 3, Ch. 534, L. 1999; amd. Sec. 4, Ch. 534, L. 1999.

CHAPTER 54

EXPRESS COMPANY LICENSE TAX
(Repealed. Sec. 1, Ch. 595, L. 1991)

Chapter Compiler's Comments

Histories of Repealed Sections:

15-54-101. En. Sec. 1, Ch. 87, L. 1917; re-en. Sec. 2305, R.C.M. 1921; re-en. Sec. 2305, R.C.M. 1935; R.C.M. 1947, 84-1701.

15-54-102. En. Sec. 7, Ch. 87, L. 1917; amd. Sec. 1, Ch. 150, L. 1921; re-en. Sec. 2311, R.C.M. 1921; re-en. Sec. 2311, R.C.M. 1935; amd. Sec. 78, Ch. 516, L. 1973; R.C.M. 1947, 84-1707; amd. Sec. 6, Ch. 294, L. 1979.

15-54-103. En. Sec. 2, Ch. 87, L. 1917; re-en. Sec. 2306, R.C.M. 1921; re-en. Sec. 2306, R.C.M. 1935; amd. Sec. 75, Ch. 516, L. 1973; R.C.M. 1947, 84-1702; amd. Sec. 7, Ch. 294, L. 1979.

15-54-104. En. Sec. 3, Ch. 87, L. 1917; re-en. Sec. 2307, R.C.M. 1921; re-en. Sec. 2307, R.C.M. 1935; amd. Sec. 76, Ch. 516, L. 1973; R.C.M. 1947, 84-1703; amd. Sec. 8, Ch. 294, L. 1979.

15-54-105. En. Sec. 9, Ch. 87, L. 1917; re-en. Sec. 2313, R.C.M. 1921; re-en. Sec. 2313, R.C.M. 1935; R.C.M. 1947, 84-1709.

15-54-106 through 15-54-110 reserved.

15-54-111. En. Sec. 10, Ch. 294, L. 1979.

15-54-112. En. Sec. 9, Ch. 294, L. 1979; amd. Sec. 27, Ch. 439, L. 1981.

15-54-113. En. Sec. 11, Ch. 294, L. 1979; amd. Sec. 28, Ch. 439, L. 1981.

CHAPTER 55

FREIGHT LINE COMPANY LICENSE TAX
(Repealed. Sec. 15, Ch. 10, Sp. L. July 1992)

Chapter Compiler's Comments

Histories of Repealed Sections:

15-55-101. En. Sec. 1, Ch. 137, L. 1949; amd. Sec. 152, Ch. 516, L. 1973; R.C.M. 1947, 84-4818.

15-55-102. En. Sec. 2, Ch. 137, L. 1949; amd. Sec. 1, Ch. 346, L. 1969; R.C.M. 1947, 84-4819.

15-55-103. En. Sec. 3, Ch. 137, L. 1949; amd. Sec. 2, Ch. 346, L. 1969; amd. Sec. 1, Ch. 339, L. 1971; amd. Sec. 153, Ch. 516, L. 1973; R.C.M. 1947, 84-4820.

15-55-104. En. Sec. 4, Ch. 137, L. 1949; amd. Sec. 154, Ch. 516, L. 1973; amd. Sec. 4, Ch. 36, L. 1977; R.C.M. 1947, 84-4821.

15-55-105. En. Sec. 5, Ch. 137, L. 1949; amd. Sec. 92, Ch. 405, L. 1973; R.C.M. 1947, 84-4822(part).

15-55-106. En. Sec. 5, Ch. 137, L. 1949; amd. Sec. 92, Ch. 405, L. 1973; R.C.M. 1947, 84-4822(part); amd. Sec. 11, Ch. 20, L. 1985; amd. Sec. 22, Ch. 811, L. 1991.

15-55-107. En. Sec. 7, Ch. 137, L. 1949; amd. Sec. 98, Ch. 405, L. 1973; R.C.M. 1947, 84-4824; amd. Sec. 29, Ch. 581, L. 1979. Repealed. Sec. 29, Ch. 811, L. 1991.

15-55-108. En. Sec. 12, Ch. 294, L. 1979; amd. Sec. 4, Ch. 676, L. 1991.

15-55-109. En. Sec. 13, Ch. 294, L. 1979; amd. Sec. 29, Ch. 439, L. 1981.

15-55-110. En. Sec. 14, Ch. 294, L. 1979.

15-55-111. En. Sec. 1, Ch. 194, L. 1983.

CHAPTER 56

SLEEPING CAR COMPANY LICENSE TAX
(Repealed. Sec. 2, Ch. 595, L. 1991)

Chapter Compiler's Comments

Histories of Repealed Sections:

15-56-101. En. Sec. 1, Ch. 64, L. 1923; re-en. Sec. 2315.1, R.C.M. 1935; amd. Sec. 119, Ch. 516, L. 1973; amd. Sec. 5, Ch. 52, L. 1977; R.C.M. 1947, 84-2301.

15-56-102. En. Sec. 6, Ch. 64, L. 1923; re-en. Sec. 2315.6, R.C.M. 1935; amd. Sec. 124, Ch. 516, L. 1973; R.C.M. 1947, 84-2306; amd. Sec. 15, Ch. 294, L. 1979.

15-56-103. En. Sec. 2, Ch. 64, L. 1923; re-en. Sec. 2315.2, R.C.M. 1935; amd. Sec. 120, Ch. 516, L. 1973; R.C.M. 1947, 84-2302; amd. Sec. 16, Ch. 294, L. 1979.

15-56-104. En. Sec. 3, Ch. 64, L. 1923; re-en. Sec. 2315.3, R.C.M. 1935; amd. Sec. 121, Ch. 516, L. 1973; R.C.M. 1947, 84-2303.

15-56-105. En. Sec. 4, Ch. 64, L. 1923; re-en. Sec. 2315.4, R.C.M. 1935; amd. Sec. 122, Ch. 516, L. 1973; R.C.M. 1947, 84-2304.

15-56-106. En. Sec. 5, Ch. 64, L. 1923; re-en. Sec. 2315.5, R.C.M. 1935; amd. Sec. 123, Ch. 516, L. 1973; R.C.M. 1947, 84-2305.

15-56-107. En. Sec. 10, Ch. 64, L. 1923; re-en. Sec. 2315.10, R.C.M. 1935; R.C.M. 1947, 84-2310; amd. Sec. 18, Ch. 294, L. 1979.

15-56-108. En. Sec. 17, Ch. 294, L. 1979.

15-56-109 and 15-56-110 reserved.

15-56-111. En. Sec. 19, Ch. 294, L. 1979.

15-56-112. En. Sec. 20, Ch. 294, L. 1979; amd. Sec. 30, Ch. 439, L. 1981.

15-56-113. En. Sec. 21, Ch. 294, L. 1979; amd. Sec. 31, Ch. 439, L. 1981.

CHAPTER 57

STORE LICENSES
(Repealed. Sec. 3, Ch. 658, L. 1991)

Chapter Compiler's Comments

Histories of Repealed Sections:

15-57-101. En. Sec. 10, Ch. 163, L. 1939; amd. Sec. 3, Ch. 160, L. 1971; amd. Sec. 5, Ch. 240, L. 1973; amd. Sec. 10, Ch. 52, L. 1977; R.C.M. 1947, 84-2410.

15-57-102. En. Sec. 1, Ch. 163, L. 1939; amd. Sec. 128, Ch. 516, L. 1973; amd. Sec. 6, Ch. 52, L. 1977; R.C.M. 1947, 84-2401; amd. Sec. 1, Ch. 132, L. 1979; amd. Sec. 12, Ch. 20, L. 1985; (3)En. Sec. 1, Ch. 417, L. 1991.

15-57-103. En. Sec. 2, Ch. 163, L. 1939; amd. Sec. 1, Ch. 122, L. 1955; amd. Sec. 9, Ch. 121, L. 1965; amd. Sec. 1, Ch. 160, L. 1971; amd. Sec. 1, Ch. 240, L. 1973; amd. Sec. 129, Ch. 516, L. 1973; amd. Sec. 7, Ch. 52, L. 1977; R.C.M. 1947, 84-2402.

15-57-104. En. Sec. 3, Ch. 163, L. 1939; amd. Sec. 130, Ch. 516, L. 1973; R.C.M. 1947, 84-2403.

15-57-105. En. Sec. 4, Ch. 163, L. 1939; amd. Sec. 2, Ch. 122, L. 1955; amd. Sec. 10, Ch. 121, L. 1965; amd. Sec. 2, Ch. 160, L. 1971; amd. Sec. 2, Ch. 240, L. 1973; amd. Sec. 131, Ch. 516, L. 1973; amd. Sec. 8, Ch. 52, L. 1977; amd. Sec. 1, Ch. 419, L. 1977; R.C.M. 1947, 84-2404.

15-57-106. En. Sec. 5, Ch. 163, L. 1939; amd. Sec. 11, Ch. 121, L. 1965; amd. Sec. 3, Ch. 240, L. 1973; amd. Sec. 1, Ch. 200, L. 1974; amd. Sec. 9, Ch. 52, L. 1977; R.C.M. 1947, 84-2405.

15-57-107. En. Sec. 7, Ch. 163, L. 1939; amd. Sec. 13, Ch. 121, L. 1965; amd. Sec. 4, Ch. 240, L. 1973; R.C.M. 1947, 84-2407.

15-57-108. En. Sec. 9, Ch. 163, L. 1939; R.C.M. 1947, 84-2409.

15-57-109. En. Sec. 12, Ch. 163, L. 1939; amd. Sec. 1, Ch. 266, L. 1971; amd. Sec. 6, Ch. 240, L. 1973; amd. Sec. 132, Ch. 516, L. 1973; amd. Sec. 19, Ch. 265, L. 1977; amd. Sec. 28, Ch. 518, L. 1977; R.C.M. 1947, 84-2412; amd. Sec. 1, Ch. 441, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 13, Ch. 79, L. 1983.

15-57-110. En. Sec. 11, Ch. 163, L. 1939; amd. Sec. 11, Ch. 52, L. 1977; R.C.M. 1947, 84-2411.

CHAPTER 58

COAL RETAILER'S LICENSE TAX
(Repealed. Sec. 2, Ch. 658, L. 1991)

Chapter Compiler's Comments

Histories of Repealed Sections:

15-58-101. En. Sec. 1, Ch. 3, Ex. L. 1921; re-en. Sec. 2327, R.C.M. 1921; re-en. Sec. 2327, R.C.M. 1935; R.C.M. 1947, 84-1401(part).

15-58-102. En. Sec. 2, Ch. 3, Ex. L. 1921; re-en. Sec. 2328, R.C.M. 1921; re-en. Sec. 2328, R.C.M. 1935; amd. Sec. 1, Ch. 125, L. 1975; R.C.M. 1947, 84-1402.

15-58-103. En. Sec. 3, Ch. 3, Ex. L. 1921; re-en. Sec. 2329, R.C.M. 1921; re-en. Sec. 2329, R.C.M. 1935; amd. Sec. 48, Ch. 516, L. 1973; R.C.M. 1947, 84-1403.

15-58-104. En. Sec. 5, Ch. 3, Ex. L. 1921; re-en. Sec. 2331, R.C.M. 1921; re-en. Sec. 2331, R.C.M. 1935; amd. Sec. 49, Ch. 516, L. 1973; amd. Sec. 3, Ch. 125, L. 1975; R.C.M. 1947, 84-1405.

15-58-105. (1), (3)En. Sec. 6, Ch. 3, Ex. L. 1921; re-en. Sec. 2332, R.C.M. 1921; re-en. Sec. 2332, R.C.M. 1935; amd. Sec. 50, Ch. 516, L. 1973; amd. Sec. 4, Ch. 125, L. 1975; Sec. 84-1406, R.C.M. 1947; (2)En. Sec. 4, Ch. 3, Ex. L. 1921; re-en. Sec. 2330, R.C.M. 1921; re-en. Sec. 2330, R.C.M. 1935; amd. Sec. 2, Ch. 125, L. 1975; Sec. 84-1404, R.C.M. 1947; R.C.M. 1947, 84-1404, 84-1406.

15-58-106. En. Sec. 8, Ch. 3, Ex. L. 1921; re-en. Sec. 2334, R.C.M. 1921; amd. Sec. 2, Ch. 74, L. 1931; re-en. Sec. 2334, R.C.M. 1935; amd. Sec. 51, Ch. 516, L. 1973; amd. Sec. 5, Ch. 125, L. 1975; R.C.M. 1947, 84-1408; amd. Sec. 32, Ch. 439, L. 1981.

15-58-107. En. 84-1408.1 by Sec. 6, Ch. 125, L. 1975; R.C.M. 1947, 84-1408.1; amd. Sec. 33, Ch. 439, L. 1981.

15-58-108. En. Sec. 17, Ch. 3, Ex. L. 1921; re-en. Sec. 2343, R.C.M. 1921; re-en. Sec. 2343, R.C.M. 1935; amd. Sec. 7, Ch. 125, L. 1975; R.C.M. 1947, 84-1417.

15-58-109. En. Sec. 15, Ch. 3, Ex. L. 1921; re-en. Sec. 2341, R.C.M. 1921; re-en. Sec. 2341, R.C.M. 1935; R.C.M. 1947, 84-1415.

15-58-110. En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 23, Ch. 811, L. 1991.

15-58-111. En. Sec. 2, Ch. 14, L. 1983.

15-58-112 through 15-58-120 reserved.

15-58-121. En. Sec. 10, Ch. 3, Ex. L. 1921; re-en. Sec. 2336, R.C.M. 1921; re-en. Sec. 2336, R.C.M. 1935; R.C.M. 1947, 84-1410.

15-58-122. En. Sec. 11, Ch. 3, Ex. L. 1921; re-en. Sec. 2337, R.C.M. 1921; re-en. Sec. 2337, R.C.M. 1935; R.C.M. 1947, 84-1411.

15-58-123. En. Sec. 13, Ch. 3, Ex. L. 1921; re-en. Sec. 2339, R.C.M. 1921; re-en. Sec. 2339, R.C.M. 1935; R.C.M. 1947, 84-1413.

15-58-124. En. Sec. 7, Ch. 3, Ex. L. 1921; re-en. Sec. 2333, R.C.M. 1921; re-en. Sec. 2333, R.C.M. 1935; R.C.M. 1947, 84-1407.

15-58-125. En. Sec. 16, Ch. 3, Ex. L. 1921; re-en. Sec. 2342, R.C.M. 1921; re-en. Sec. 2342, R.C.M. 1935; R.C.M. 1947, 84-1416.

15-58-126. En. Sec. 1, Ch. 194, L. 1983.

CHAPTER 59

CEMENT TAXES

Part 1 — Cement and Gypsum Producers

15-59-101. Definitions.
15-59-102. License tax on producers and importers of gypsum and cement.
15-59-103. Repealed.
15-59-104. Manufacturers to keep records.
15-59-105. Quarterly statement and payment of tax.
15-59-106. Procedure to estimate tax on failure to file statement — penalty and interest.
15-59-107. Warrant for distraint.
15-59-108. Deposit of taxes.
15-59-109. License tax supplemental.
15-59-110. Duty to file statement.
15-59-111. Renumbered 15-59-121 by Code Commissioner, 1983.
15-59-112. Deficiency assessment — review — interest.
15-59-113. Credit for overpayment — interest on overpayment.
15-59-114. Statute of limitations.
15-59-115 through 15-59-120 reserved.
15-59-121. Penalty for violations.
15-59-122 through 15-59-125 reserved.
15-59-126. Terminated.

Part 2 — Cement Dealers
(Repealed, Renumbered, and Terminated)

15-59-201. Repealed.
15-59-202. Repealed.
15-59-203 through 15-59-210. Repealed.
15-59-211. Renumbered 15-59-221 by Code Commissioner, 1983.
15-59-212. Repealed.
15-59-213. Repealed.
15-59-214. Repealed.
15-59-215 through 15-59-220 reserved.
15-59-221. Repealed.
15-59-222 through 15-59-225 reserved.
15-59-226. Terminated.

Part 1
Cement and Gypsum Producers

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-59-101. Definitions. (1) The word "import" shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of Montana of any cement, gypsum, gypsum plaster, stucco, wallboard, land plaster, or other products of cement or gypsum, as the same are defined in this section, shipped or transported into this state from point of origin without this state.

(2) The words "products of cement or gypsum", as used in 15-59-102, shall, in addition to the articles herein specifically enumerated, include all manufactured products into which gypsum enters as a component part to the extent of not less than 50% by weight. No double taxation of either cement, gypsum, or the products thereof is imposed by this part.

History: (1)En. Sec. 2, Ch. 15, Ex. L. 1921; re-en. Sec. 2357, R.C.M. 1921; amd. Sec. 1, Ch. 127, L. 1925; amd. Sec. 1, Ch. 166, L. 1931; re-en. Sec. 2357, R.C.M. 1935; amd. Sec. 1, Ch. 192, L. 1945; amd. Sec. 37, Ch. 516, L. 1973; amd. Sec. 1, Ch. 108, L. 1977; Sec. 84-1202, R.C.M. 1947; (2)En. Sec. 2, Ch. 166, L. 1931; re-en. Sec. 2357.1, R.C.M. 1935; amd. Sec. 2, Ch. 192, L. 1945; Sec. 84-1203, R.C.M. 1947; R.C.M. 1947, 84-1202(2), 84-1203.

15-59-102. License tax on producers and importers of gypsum and cement. Every person engaged in or carrying on the business in the state of producing or manufacturing cement, gypsum, gypsum plaster, stucco, wallboard, land plaster, or other products of cement or gypsum and any person who imports into this state any such products for sale or use must pay to the department of revenue for the use of the state a license tax for engaging in and carrying on such business in the state in an amount equal to the following sums:

(1) for each ton of cement produced or manufactured by such person or used by such person in the manufacture or production of any of the articles or products hereinabove enumerated or imported by such person into this state for sale or use, 22 cents;

(2) for each ton of gypsum produced or manufactured by such person or used by such person in the manufacture or production of any of the articles or products hereinabove named or imported by such person into this state for such sale or use, 5 cents.

History: En. Sec. 2, Ch. 15, Ex. L. 1921; re-en. Sec. 2357, R.C.M. 1921; amd. Sec. 1, Ch. 127, L. 1925; amd. Sec. 1, Ch. 166, L. 1931; re-en. Sec. 2357, R.C.M. 1935; amd. Sec. 1, Ch. 192, L. 1945; amd. Sec. 37, Ch. 516, L. 1973; amd. Sec. 1, Ch. 108, L. 1977; R.C.M. 1947, 84-1202(1).

15-59-103. Repealed. Sec. 4, Ch. 334, L. 1981.

History: En. Sec. 4, Ch. 15, Ex. L. 1921; re-en. Sec. 2359, R.C.M. 1921; re-en. Sec. 2359, R.C.M. 1935; amd. Sec. 4, Ch. 192, L. 1945; amd. Sec. 39, Ch. 516, L. 1973; R.C.M. 1947, 84-1205.

15-59-104. Manufacturers to keep records. Each person subject to 15-59-102 shall keep a record in the form required by the department of all cement, gypsum, gypsum plaster, stucco, wallboard, land plaster, or other products of cement or gypsum manufactured or produced by the person in this state. The records must at all times during business hours be subject to inspection by the department.

History: En. Sec. 5, Ch. 15, Ex. L. 1921; re-en. Sec. 2360, R.C.M. 1921; re-en. Sec. 2360, R.C.M. 1935; amd. Sec. 5, Ch. 192, L. 1945; amd. Sec. 40, Ch. 516, L. 1973; R.C.M. 1947, 84-1206; amd. Sec. 125, Ch. 27, Sp. L. November 1993.

15-59-105. Quarterly statement and payment of tax. (1) Each person must, within 30 days after the end of each quarter, make out on forms prescribed by the department of revenue, and deliver to the department a statement showing the total number of tons of cement or gypsum produced by such person or used by him in the manufacture of the respective articles or products enumerated in 15-59-101(2) and 15-59-102 or imported by such person into the state of Montana for sale or use during each month of such quarter and during the whole quarter and such other information as the department may require, together with the total amount due to the state as license taxes for such quarter.

(2) Such annual license tax as imposed by 15-59-102 shall be paid in quarterly installments for the quarters ending, respectively, March 31, June 30, September 30, and December 31 of each year, and the amount of such license tax due for each such quarter shall be paid to the department within 30 days after the end of each such quarter and at the same time such statement is delivered to the department.

(3) Any such person engaged in carrying on such business at more than one place or operating more than one factory or plant in this state may include all thereof in one statement.

(4) The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.

History: (1), (3), (4)En. Sec. 6, Ch. 15, Ex. L. 1921; re-en. Sec. 2361, R.C.M. 1921; re-en. Sec. 2361, R.C.M. 1935; amd. Sec. 6, Ch. 192, L. 1945; amd. Sec. 41, Ch. 516, L. 1973; amd. Sec. 2, Ch. 108, L. 1977; Sec. 84-1207, R.C.M. 1947; (2)En. Sec. 3, Ch. 15, Ex. L. 1921; re-en. Sec. 2358, R.C.M. 1921; re-en. Sec. 2358, R.C.M. 1935; amd. Sec. 3, Ch. 192, L. 1945; amd. Sec. 38, Ch. 516, L. 1973; Sec. 84-1204, R.C.M. 1947; R.C.M. 1947, 84-1204, 84-1207.

15-59-106. Procedure to estimate tax on failure to file statement — penalty and interest. (1) If a person fails to file any statement required by 15-59-105 within the time required or fails to pay the tax required by this part on or before the date the payment is due, the department shall, immediately after the time has expired, determine the amounts of the respective articles or products enumerated in 15-59-101(2) and 15-59-102 manufactured or produced by the person within this state or imported by the person into the state during the quarter and during each month of the quarter and shall determine and fix the amount of the license taxes due to the state from the person for the quarter.

(2) The department shall add to the amount of delinquent license taxes penalty and interest as provided in 15-1-216.

(3) The department shall mail to the person required to file a quarterly statement and pay any license tax a letter setting forth the amount of license tax, penalty, and interest due, and the letter must contain a statement that if payment is not made, a warrant for distraint may be filed.

(4) A penalty imposed by 15-1-216 may be waived by the department pursuant to 15-1-206.

History: En. Sec. 8, Ch. 15, Ex. L. 1921; re-en. Sec. 2363, R.C.M. 1921; re-en. Sec. 2363, R.C.M. 1935; amd. Sec. 8, Ch. 192, L. 1945; amd. Sec. 42, Ch. 516, L. 1973; amd. Sec. 3, Ch. 108, L. 1977; R.C.M. 1947, 84-1209; amd. Sec. 34, Ch. 439, L. 1981; amd. Sec. 40, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-59-107. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded.

History: En. 84-1213 by Sec. 4, Ch. 108, L. 1977; R.C.M. 1947, 84-1213; amd. Sec. 35, Ch. 439, L. 1981.

15-59-108. Deposit of taxes. All license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501, be deposited to the credit of the general fund of the state.

History: En. Sec. 9, Ch. 15, Ex. L. 1921; re-en. Sec. 2364, R.C.M. 1921; re-en. Sec. 2364, R.C.M. 1935; R.C.M. 1947, 84-1210; amd. Sec. 13, Ch. 455, L. 1993; amd. Sec. 17, Ch. 18, L. 1995.

15-59-109. License tax supplemental. The license taxes herein provided for shall be in addition to all taxes and fees now required to be paid by the persons subject to the provisions of this part.

History: En. Sec. 11, Ch. 15, Ex. L. 1921; re-en. Sec. 2366, R.C.M. 1921; re-en. Sec. 2366, R.C.M. 1935; R.C.M. 1947, 84-1212.

15-59-110. Duty to file statement. It shall be unlawful for any person to fail, neglect, or refuse to file any statement or certificate required by 15-59-105 in the manner or within the time herein required or to make such statement false in any particular.

History: En. Sec. 7, Ch. 15, Ex. L. 1921; re-en. Sec. 2362, R.C.M. 1921; re-en. Sec. 2362, R.C.M. 1935; amd. Sec. 7, Ch. 192, L. 1945; R.C.M. 1947, 84-1208.

15-59-111. Renumbered 15-59-121 by Code Commissioner, 1983.

15-59-112. Deficiency assessment — review — interest. (1) When the department determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, as provided in 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest must be added to the deficiency assessment as provided in 15-1-216.

History: En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 24, Ch. 811, L. 1991; amd. Sec. 41, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-59-113. Credit for overpayment — interest on overpayment. (1) If the department determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on unpaid taxes, as provided in 15-1-216, due from the due date of the return or from the date of overpayment, whichever is later, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest may not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law may not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 2, Ch. 14, L. 1983; amd. Sec. 42, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-59-114. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date

of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

15-59-115 through 15-59-120 reserved.

15-59-121. Penalty for violations. Any violation of the provisions of 15-59-101, 15-59-102, 15-59-104 through 15-59-106, 15-59-110, 15-59-112, or 15-59-113 shall be deemed a misdemeanor and shall be punished by a fine not exceeding $500 or by imprisonment in the county jail not exceeding 6 months or by both such fine and imprisonment.

History: En. Sec. 10, Ch. 15, Ex. L. 1921; re-en. Sec. 2365, R.C.M. 1921; re-en. Sec. 2365, R.C.M. 1935; amd. Sec. 9, Ch. 192, L. 1945; R.C.M. 1947, 84-1211; MCA 1981, 15-59-111; redes. 15-59-121 by Code Commissioner, 1983; amd. Sec. 52, Ch. 370, L. 1987.

15-59-122 through 15-59-125 reserved.

15-59-126. Terminated. Sec. 39(4), Ch. 15, Sp. L. July 1992.

History: En. Sec. 13, Ch. 15, Sp. L. July 1992.

Part 2
Cement Dealers
(Repealed, Renumbered, and Terminated)

15-59-201. Repealed. Sec. 3(2), Ch. 65, L. 1997.

History: En. Sec. 2, Ch. 16, Ex. L. 1921; re-en. Sec. 2368, R.C.M. 1921; amd. Sec. 2, Ch. 127, L. 1925; re-en. Sec. 2368, R.C.M. 1935; amd. Sec. 1, Ch. 127, L. 1975; amd. Sec. 1, Ch. 106, L. 1977; R.C.M. 1947, 84-1102.

15-59-202. Repealed. Sec. 4, Ch. 334, L. 1981.

History: En. Sec. 3, Ch. 16, Ex. L. 1921; re-en. Sec. 2369, R.C.M. 1921; re-en. Sec. 2369, R.C.M. 1935; amd. Sec. 33, Ch. 516, L. 1973; R.C.M. 1947, 84-1103.

15-59-203 through 15-59-210. Repealed. Sec. 3(2), Ch. 65, L. 1997.

Compiler's Comments

Histories of Repealed Sections:

15-59-203. En. Sec. 5, Ch. 16, Ex. L. 1921; re-en. Sec. 2371, R.C.M. 1921; re-en. Sec. 2371, R.C.M. 1935; amd. Sec. 34, Ch. 516, L. 1973; R.C.M. 1947, 84-1105; amd. Sec. 126, Ch. 27, Sp. L. November 1993.

15-59-204. (1), (3)En. Sec. 6, Ch. 16, Ex. L. 1921; re-en. Sec. 2372, R.C.M. 1921; re-en. Sec. 2372, R.C.M. 1935; amd. Sec. 35, Ch. 516, L. 1973; amd. Sec. 3, Ch. 127, L. 1975; Sec. 84-1106, R.C.M. 1947; (2)En. Sec. 4, Ch. 16, Ex. L. 1921; re-en. Sec. 2370, R.C.M. 1921; re-en. Sec. 2370, R.C.M. 1935; amd. Sec. 2, Ch. 127, L. 1975; amd. Sec. 2, Ch. 106, L. 1977; Sec. 84-1104, R.C.M. 1947; R.C.M. 1947, 84-1104, 84-1106.

15-59-205. En. Sec. 8, Ch. 16, Ex. L. 1921; re-en. Sec. 2374, R.C.M. 1921; re-en. Sec. 2374, R.C.M. 1935; amd. Sec. 36, Ch. 516, L. 1973; amd. Sec. 4, Ch. 127, L. 1975; R.C.M. 1947, 84-1108; amd. Sec. 36, Ch. 439, L. 1981.

15-59-206. En. 84-1108.1 by Sec. 5, Ch. 127, L. 1975; R.C.M. 1947, 84-1108.1; amd. Sec. 37, Ch. 439, L. 1981.

15-59-207. En. Sec. 10, Ch. 16, Ex. L. 1921; re-en. Sec. 2376, R.C.M. 1921; re-en. Sec. 2376, R.C.M. 1935; R.C.M. 1947, 84-1110.

15-59-208. En. Sec. 12, Ch. 16, Ex. L. 1921; re-en. Sec. 2378, R.C.M. 1921; re-en. Sec. 2378, R.C.M. 1935; R.C.M. 1947, 84-1112; amd. Sec. 14, Ch. 455, L. 1993; amd. Sec. 18, Ch. 18, L. 1995.

15-59-209. En. Sec. 14, Ch. 16, Ex. L. 1921; re-en. Sec. 2380, R.C.M. 1921; re-en. Sec. 2380, R.C.M. 1935; R.C.M. 1947, 84-1114.

15-59-210. En. Sec. 7, Ch. 16, Ex. L. 1921; re-en. Sec. 2373, R.C.M. 1921; re-en. Sec. 2373, R.C.M. 1935; R.C.M. 1947, 84-1107.

15-59-211. Renumbered 15-59-221 by Code Commissioner, 1983.

15-59-212. Repealed. Sec. 3(2), Ch. 65, L. 1997.

History: En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 25, Ch. 811, L. 1991.

15-59-213. Repealed. Sec. 3(2), Ch. 65, L. 1997.

History: En. Sec. 2, Ch. 14, L. 1983.

15-59-214. Repealed. Sec. 3(2), Ch. 65, L. 1997.

History: En. Sec. 1, Ch. 194, L. 1983.

15-59-215 through 15-59-220 reserved.

15-59-221. Repealed. Sec. 3(2), Ch. 65, L. 1997.

History: En. Sec. 13, Ch. 16, Ex. L. 1921; re-en. Sec. 2379, R.C.M. 1921; re-en. Sec. 2379, R.C.M. 1935; R.C.M. 1947, 84-1113; MCA 1981, 15-59-211; redes. 15-59-221 by Code Commissioner, 1983.

15-59-222 through 15-59-225 reserved.

15-59-226. Terminated. Sec. 39(4), Ch. 15, Sp. L. July 1992.

History: En. Sec. 14, Ch. 15, Sp. L. July 1992.

CHAPTER 60

NURSING FACILITY UTILIZATION FEE

(Contingent — see chapter compiler's comments.)

Part 1 — General Provisions

15-60-101. Definitions.
15-60-102. Utilization fee for bed days in nursing facilities.
15-60-103. Relation to other taxes and fees.
15-60-104. Rulemaking authority.

Part 2 — Collection of Fee

15-60-201. Reporting and collection of fee.
15-60-202. Audit — records.
15-60-203. Periods of limitation.
15-60-204. Penalty and interest for delinquent fees — waiver.
15-60-205. Estimated fee on failure to file.
15-60-206. Deficiency assessment — hearing.
15-60-207. Closing agreements.
15-60-208. Credit for overpayment — interest on overpayment.
15-60-209. Warrant for distraint.
15-60-210. Disposition of fee.

Chapter Compiler's Comments

Contingent Voidness: Section 18, Ch. 746, L. 1991, provided: "(1) If federal law or policy is amended to allow a nursing facility to bill a person receiving nursing care for which the facility is being reimbursed by medicare or medicaid for the utilization fee provided in [section 2] [15-60-102], [this act] is void as of the effective date of the change in federal law or policy.

(2) If federal law or policy is amended so that the utilization fees collected pursuant to [this act] may not be considered as the state's share in claiming federal financial participation under the medicaid program, [this act] is void as of the effective date of the change in federal law or policy.

(3) If the federal government refuses to participate in or denies approval of any plan for medicaid payments to nursing facilities on grounds that it considers the payments to be reimbursement to facilities for payment of the utilization fees, [this act] is void as of the date of receipt by the department of social and rehabilitation services of notice of an official determination of such refusal or denial.

(4) If [this act] becomes void under the provisions of this section, all fees received or collected by the department prior to the date upon which the act becomes void must be deposited in accordance with [section 13] [15-60-210] and a person or party may not receive a refund of any fees received or collected by the department prior to the date upon which [this act] becomes void."

Part 1
General Provisions

15-60-101. *(Temporary)* **Definitions.** For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Bed day" means each 24-hour period that a resident of a nursing facility is present in the facility and receiving skilled nursing care or intermediate nursing care or in which a bed is held for a resident while the resident is on temporary leave from the facility.

(b) The term includes all periods of 24 hours described in subsection (1)(a), regardless of the source of payment. The term also includes the day of a resident's admission to a nursing facility and the day of the resident's death, even though the resident is present for less than a 24-hour period on these days.

(2) "Calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31.

(3) "Department" means the department of revenue.

(4) "Nursing facility" or "facility" means a health care facility licensed by the department of public health and human services as a nursing facility to provide skilled nursing care or intermediate nursing care. The term includes nursing facilities whether they are:

(a) operated as nonprofit or for-profit facilities;

(b) freestanding or part of another health care facility; or

(c) publicly or privately operated.

(5) "Report" means the report of bed days required in 15-60-201.

(6) "Skilled nursing care" and "intermediate nursing care" have the same meaning as those terms are defined in 50-5-101.

(7) "Utilization fee" or "fee" means the fee required to be paid for each bed day in a nursing facility, as provided in 15-60-102. *(Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)*

History: En. Sec. 1, Ch. 746, L. 1991; amd. Sec. 1, Ch. 558, L. 1993; amd. Sec. 44, Ch. 418, L. 1995; amd. Sec. 49, Ch. 546, L. 1995.

15-60-102. *(Temporary)* **Utilization fee for bed days in nursing facilities.** A nursing facility in the state shall pay to the department of revenue a utilization fee in the amount of $2.80 for each bed day in the facility. The fees collected must be deposited in the general fund. *(Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)*

History: En. Sec. 2, Ch. 746, L. 1991; amd. Sec. 2, Ch. 558, L. 1993; amd. Sec. 8, Ch. 509, L. 1995.

15-60-103. *(Temporary)* **Relation to other taxes and fees.** The utilization fee imposed under 15-60-102 is in addition to any other taxes and fees required by law to be paid by nursing facilities. *(Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)*

History: En. Sec. 14, Ch. 746, L. 1991.

15-60-104. *(Temporary)* **Rulemaking authority.** The department of revenue may adopt rules necessary to implement and administer this chapter. *(Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)*

History: En. Sec. 15, Ch. 746, L. 1991.

Part 2
Collection of Fee

15-60-201. *(Temporary)* **Reporting and collection of fee.** (1) A nursing facility shall report to the department of revenue, following the end of each calendar quarter, the number of bed days in the facility during the quarter. The report must be in the form prescribed by the department and is due on or before the last day of the month following the close of each calendar quarter. The report must be accompanied by a payment in an amount equal to the fee required to be paid under 15-60-102.

(2) The department of public health and human services shall provide the department at the end of each calendar quarter with a list of facilities as defined in 15-60-101(4). *(Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)*

History: En. Sec. 3, Ch. 746, L. 1991; amd. Sec. 45, Ch. 418, L. 1995; amd. Sec. 50, Ch. 546, L. 1995.

15-60-202. *(Temporary)* **Audit — records.** (1) The department of revenue may audit the records and other documents of any nursing facility to ensure that the proper utilization fee has been collected.

(2) The department may require the facility to provide records and other documentation, including books, ledgers, and registers, necessary for the department to verify the proper amount of the utilization fee paid.

(3) A facility shall maintain and make available for inspection by the department sufficient records and other documentation to demonstrate the number of bed days in the facility subject to the utilization fee. The facility shall maintain these records for a period of at least 5 years from the date the report is due. *(Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)*

History: En. Sec. 4, Ch. 746, L. 1991.

15-60-203. *(Temporary)* **Periods of limitation.** (1) Except as otherwise provided in this section, a deficiency may not be assessed or collected with respect to the quarter for which a report is filed unless the notice of additional fees proposed to be assessed is mailed within 5 years from the date the report was filed. For the purposes of this section, a report filed before the last day prescribed for filing is considered filed on the last day. If, before the expiration of the period prescribed for assessment of the fee, the facility consents in writing to an assessment after the 5-year period, the fee may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be paid or allowed with respect to the year for which a report is filed after 5 years from the last day prescribed for filing the report or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period, the facility files a claim or the department has determined the existence of the overpayment and has approved the refund or credit. If the facility has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit is filed or a credit or refund allowed in the event no claim is filed is automatically extended. *(Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)*

History: En. Sec. 5, Ch. 746, L. 1991.

15-60-204. *(Temporary)* **Penalty and interest for delinquent fees — waiver.** If the fee for any facility is not paid on or before the due date of the report as provided in 15-60-201(1), penalty and interest, as provided in 15-1-216, must be added to the fee. *(Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)*

History: En. Sec. 6, Ch. 746, L. 1991; amd. Sec. 43, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-60-205. *(Temporary)* **Estimated fee on failure to file.** For the purpose of ascertaining the correctness of any report or for the purpose of making an estimate of bed day use of any facility where information has been obtained, the department may:

(1) examine or cause to have examined by any designated agent or representative any books, papers, records, or memoranda bearing upon the matters required to be included in the report;

(2) require the attendance of any officer or employee of the facility rendering the report or the attendance of any other person in the premises having relevant knowledge; and

(3) take testimony and require production of any other material for its information. *(Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)*

History: En. Sec. 7, Ch. 746, L. 1991; amd. Sec. 19, Ch. 746, L. 1991.

15-60-206. *(Temporary)* **Deficiency assessment — hearing.** (1) If the department determines that the amount of fees due is greater than the amount disclosed by the report, it shall mail to the facility a notice of the additional fees proposed to be assessed. Within 30 days after the mailing of the notice, the facility may file with the department a written protest against the proposed additional fees, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its fees liability. If no protest is filed, the amount of the additional fees proposed to be assessed becomes final upon the expiration of the 30-day period. If such protest is filed, the department shall reconsider the proposed assessment and, if the facility has so requested, shall grant the facility an oral hearing. After consideration of the protest and the evidence presented in the event of an oral hearing, the department's action upon the protest is final when it mails notice of its action to the facility.

(2) When a deficiency is determined and the fees become final, the department shall mail notice and demand to the facility for payment, and the fees become due and payable at the expiration of 10 days from the date of the notice and demand. Interest on any deficiency assessment bears interest from the date specified in 15-60-203 for payment of the fees. A certificate by the department of the mailing of the notices specified in this section is prima facie evidence of the computation and levy of the deficiency in the fees and of the giving of the notices. *(Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)*

History: En. Sec. 8, Ch. 746, L. 1991.

15-60-207. *(Temporary)* **Closing agreements.** (1) The director of the department or any person authorized in writing by him is authorized to enter into an agreement with any facility relating to the liability of the facility in respect to the fees imposed by this chapter for any period.

(2) An agreement under this section is final and conclusive, and except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded. *(Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)*

History: En. Sec. 9, Ch. 746, L. 1991.

15-60-208. *(Temporary)* **Credit for overpayment — interest on overpayment.** (1) If the department determines that the amount of fees, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment must be credited against any fees, penalty, or interest then due from the facility and the balance must be refunded to the facility or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on unpaid taxes, as provided in 15-1-216, due from the due date of the report or from the date of overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. Interest does not accrue during any period during which the processing of a claim for refund is delayed more than 30 days by reason of failure of the facility to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(3) Interest is not allowed:

(a) if the overpayment is refunded within 6 months from the date the report is due or from the date the return is filed, whichever is later; or

(b) if the amount of interest is less than $1.

(4) A payment not made incident to a discharge of actual utilization fee liability or a payment reasonably assumed to be imposed by this chapter is not considered an overpayment with respect to which interest is allowable. *(Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)*

History: En. Sec. 10, Ch. 746, L. 1991; amd. Sec. 44, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-60-209. *(Temporary)* **Warrant for distraint.** If the utilization fee is not paid when due, the department of revenue may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. *(Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)*

History: En. Sec. 12, Ch. 746, L. 1991.

15-60-210. *(Temporary)* **Disposition of fee.** All proceeds from the collection of utilization fees, including penalties and interest, must, in accordance with the provisions of

15-1-501, be deposited in the general fund. *(Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)*

History: **En. Sec. 13, Ch. 746, L. 1991; amd. Sec. 15, Ch. 455, L. 1993; amd. Sec. 3, Ch. 558, L. 1993; amd. Sec. 19, Ch. 18, L. 1995; amd. Sec. 9, Ch. 509, L. 1995.**

CHAPTER 61

MEDICAL CARE SAVINGS ACCOUNT

Part 1 — General Provisions

15-61-101. Short title.
15-61-102. Definitions.

Part 2 — Medical Care Savings Account—Administration

15-61-201. Establishment of account.
15-61-202. Tax exemption — conditions.
15-61-203. Withdrawal of funds from account for purposes other than medical expenses and long-term care.
15-61-204. Administration of account.
15-61-205. False claims prohibited — penalty.

Part 1

General Provisions

15-61-101. Short title. This chapter may be cited as the "Montana Medical Care Savings Account Act of 1995".

History: **En. Sec. 1, Ch. 295, L. 1995.**

15-61-102. Definitions. As used in this chapter, unless it clearly appears otherwise, the following definitions apply:

(1) "Account administrator" means:

(a) a state or federally chartered bank, savings and loan association, credit union, or trust company;

(b) a health care insurer as defined in 33-22-125;

(c) a certified public accountant licensed to practice in this state pursuant to Title 37, chapter 50;

(d) an employer if the employer has a self-insured health plan under ERISA;

(e) the account holder or an employee for whose benefit the account in question is established;

(f) a broker, insurance producer, or investment adviser regulated by the commissioner of insurance;

(g) an attorney licensed to practice law in this state;

(h) a licensed public accountant or a person who is an enrolled agent allowed to practice before the United States internal revenue service.

(2) "Account holder" means an individual who is a resident of this state and who establishes a medical care savings account or for whose benefit the account is established.

(3) "Dependent" means the spouse of the employee or account holder or a child of the employee or account holder if the child is:

(a) under 23 years of age and enrolled as a full-time student at an accredited college or university or is under 19 years of age;

(b) legally entitled to the provision of proper or necessary subsistence, education, medical care, or other care necessary for the health, guidance, or well-being of the child and is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) mentally or physically incapacitated to the extent that the child is not self-sufficient.

(4) "Eligible medical expense" means an expense paid by the employee or account holder for medical care defined by 26 U.S.C. 213(d) for the employee or account holder or a dependent of the employee or account holder.

(5) "Employee" means an employed individual for whose benefit or for the benefit of whose dependents a medical care savings account is established. The term includes a self-employed individual.

(6) "ERISA" means the Employee Retirement Income Security Act of 1974, Public Law 93-406.

(7) "Medical care savings account" or "account" means an account established with an account administrator in this state pursuant to 15-61-201.

History: En. Sec. 2, Ch. 295, L. 1995; amd. Sec. 1, Ch. 296, L. 1997; amd. Sec. 38, Ch. 51, L. 1999.

Part 2
Medical Care Savings Account — Administration

15-61-201. Establishment of account. (1) An employer, except as otherwise provided by statute, contract, or a collective bargaining agreement, may establish a medical care savings account for an employee of the employer or for a dependent of the employee.

(2) An individual who is a resident of this state may establish a medical care savings account for that individual or for a dependent of the individual.

(3) Before making any contributions to an employee's account, an employer shall inform an employee in writing of the state and federal tax status of contributions made pursuant to this chapter.

(4) Upon agreement between an employer and an employee, an employee may have the employer contribute to the employee's medical care savings account, to a health insurance policy or program for the employee, or to both the account and the policy or program.

History: En. Sec. 3, Ch. 295, L. 1995.

15-61-202. Tax exemption — conditions. (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an employee or account holder to an account and all interest or other income on that principal may be excluded from the adjusted gross income of the employee or account holder and are exempt from taxation, in accordance with 15-30-111(2)(j), as long as the principal and interest or other income is contained within the account or withdrawn only for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee or account holder. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than an eligible medical expense or the long-term care of the employee or account holder or a dependent of the employee or account holder.

(2) An employee or account holder may exclude as an annual contribution in 1 year not more than $3,000. There is no limitation on the amount of funds and interest or other income on those funds that may be retained tax-free within an account.

(3) A deduction pursuant to 15-30-121 is not allowed to an employee or account holder for an amount contributed to an account. An employee or account holder may not deduct pursuant to 15-30-121 or exclude pursuant to 15-30-111 an amount representing a loss in the value of an investment contained in an account.

(4) An employee or account holder may in 1 year deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the employee or account holder in the year does not exceed $3,000. An employee or account holder who deposits more than $3,000 into an account in a year may exclude from the employee's or account holder's adjusted gross income in accordance with 15-30-111(2)(j) in a subsequent year any part of $3,000 per year not previously excluded.

(5) The transfer of money in an account owned by one employee or account holder to the account of another employee or account holder within the immediate family of the first

employee or account holder does not subject either employee or account holder to tax liability under this section. Amounts contained within the account of the receiving employee or account holder are subject to the requirements and limitations provided in this section.

(6) The employee or account holder who establishes the account is the owner of the account. An employee or account holder may withdraw money in an account and deposit the money in another account with a different or with the same account administrator without incurring tax liability.

(7) The amount of a disbursement of any assets of a medical care savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an employee or account holder does not subject the employee or account holder to tax liability.

(8) Within 30 days of being furnished proof of the death of the employee or account holder, the account administrator shall distribute the principal and accumulated interest or other income in the account to the estate of the employee or account holder or to a designated pay-on-death beneficiary as provided in 72-6-223.

History: En. Sec. 4, Ch. 295, L. 1995; amd. Sec. 1, Ch. 429, L. 1999.

15-61-203. Withdrawal of funds from account for purposes other than medical expenses and long-term care. (1) An employee or account holder may withdraw money from the individual's medical care savings account for any purpose other than an eligible medical expense or the long-term care of the employee or account holder or a dependent of the employee or account holder only on the last business day of the account administrator's business year. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the employee or account holder.

(2) If the employee or account holder withdraws money from the account other than for eligible medical expenses or long-term care or other than on the last business day of the account administrator's business year, the administrator shall withhold from the amount of the withdrawal and, on behalf of the employee or account holder, pay as a penalty to the department of revenue an amount equal to 10% of the amount of the withdrawal. Payments made to the department pursuant to this section must be deposited in the general fund. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the employee or account holder.

(3) For the purposes of this section, "last business day of the account administrator's business year", as applied to an account administrator who is also the account holder or an employee, means the last weekday in December.

History: En. Sec. 5, Ch. 295, L. 1995; amd. Sec. 2, Ch. 296, L. 1997.

15-61-204. Administration of account. (1) (a) An account administrator shall administer the medical care savings account from which the payment of claims is made and, except as provided in subsection (1)(b), has a fiduciary duty to the person for whose benefit the account is administered.

(b) Except for reporting and remitting of penalties to the department of revenue, a financial institution shall administer a medical savings account as a regular deposit or share account and has the same rights and duties pertaining to the account as pertain to a regular deposit or share account. Notwithstanding any other provision of this chapter, a financial institution is not responsible for determining whether a medical expense is eligible or nonreimbursable or for the use or application of funds if the account holder attests that withdrawals are for eligible and nonreimbursable medical expenses.

(2) Not more than 30 days after an account administrator begins to administer an account, the account administrator shall notify in writing each employee and account holder on whose behalf the account administrator administers an account of the date of the last business day of the account administrator's business year.

(3) An account administrator may use funds held in a medical care savings account only for the purpose of paying the eligible medical expenses of the employee or account holder or the employee's or account holder's dependents, purchasing long-term care insurance or a long-term care annuity for the long-term care of the employee or account holder or a dependent of the employee or account holder, or paying the expenses of administering the account. Funds

held in a medical care savings account may not be used to pay medical expenses or for a long-term care insurance policy or annuity of the employee or account holder or a dependent of the employee or account holder that is otherwise reimbursable, including medical expenses payable pursuant to an automobile insurance policy, workers' compensation insurance policy or self-insured plan, or another health coverage policy, certificate, or contract.

(4) The employee or account holder may submit documentation of eligible medical expenses paid by the employee or account holder or a dependent of the employee or account holder in the tax year to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for eligible medical expenses. The burden of proving that a withdrawal from a medical savings account was made for an eligible medical expense is upon the account holder and not upon the account administrator or the employer of the account holder.

(5) The employee or account holder may submit documentation of the purchase of long-term care insurance or a long-term care annuity for the employee or account holder or a dependent of the employee or account holder to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for payments made for the purchase of the insurance or annuity. The account administrator may also provide for a system of automatic withdrawals from the account for the payment of long-term care insurance premiums or an annuity.

(6) If an employer makes contributions to a medical care savings account on a periodic installment basis, the employer may advance to an employee, interest free, an amount necessary to cover medical expenses incurred that exceeds the amount in the employee's medical care savings account at the time that the expense is incurred if the employee agrees to repay the advance from future installments or when the employee ceases employment with the employer.

(7) In the case of an account administrator who is also the account holder or an employee:

(a) notice by the account administrator to the account holder pursuant to subsection (2) is not required;

(b) the account administrator may not use funds held in an account to pay expenses of administering the account, except that a service fee may be deducted from the account by a financial institution or other holder of the account;

(c) documentation of eligible medical expenses must be maintained but is not required to be submitted to the account administrator;

(d) contributions to a medical savings account must be established in a separate account and be segregated from other funds;

(e) the account holder is subject to the same yearend reporting requirements as all other account administrators; and

(f) the account holder is required to forward the 10% penalty on funds withdrawn for noneligible medical expenses to the state.

History: En. Sec. 6, Ch. 295, L. 1995; amd. Sec. 3, Ch. 296, L. 1997; amd. Sec. 2, Ch. 429, L. 1999.

15-61-205. False claims prohibited — penalty. (1) A person may not knowingly prepare or cause to be prepared a false claim, receipt, statement, or billing to justify the withdrawal of money from an account.

(2) A person who violates subsection (1) by preparing or causing the preparation of a false claim, receipt, statement, or billing in an amount not exceeding $300 is guilty of theft and upon conviction shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(3) A person who violates subsection (1) by preparing or causing the preparation of a false claim, receipt, statement, or billing in an amount of $300 or more is guilty of theft and upon conviction shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the amount withdrawn from an account in violation of this section.

History: En. Sec. 7, Ch. 295, L. 1995.

CHAPTER 62

FAMILY EDUCATION SAVINGS ACT

Part 1 — General Provisions

15-62-101. Short title.
15-62-102. Purpose.
15-62-103. Definitions.

Part 2 — Family Education Savings Program Account—Administration

15-62-201. Program requirements — application — establishment of account — qualified and nonqualified withdrawal — penalties.
15-62-202. Changes in designated beneficiary.
15-62-203. Selection of financial institution as account depository and manager — contract — termination.
15-62-204. Repealed.
15-62-205. Scholarships and financial aid provisions — exceptions.
15-62-206. Limitations.
15-62-207. Deductions for contributions.
15-62-208. Tax on certain withdrawals of deductible contributions.
15-62-209. Access to records.

Chapter Cross-References

Family Education Savings Program Oversight Committee, 20-25-901.

Part 1
General Provisions

15-62-101. Short title. This chapter may be cited as the "Family Education Savings Act".

History: En. Sec. 1, Ch. 540, L. 1997.

15-62-102. Purpose. (1) It is the intent of the legislature to establish the Family Education Savings Act in recognition that the general welfare and well-being of the state of Montana are directly related to the educational levels and skills of its citizens. A vital and valid public purpose of the state of Montana is served by the establishment and implementation of a program that will encourage and make possible the attainment of an accessible, affordable postsecondary education by the greatest number of citizens through a savings program.

(2) The legislature further intends that the board achieve this purpose most effectively through a public-private partnership using selected financial institutions to serve as depositories for individuals' postsecondary education savings accounts.

History: En. Sec. 2, Ch. 540, L. 1997.

15-62-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Account" means an individual trust account or savings account established under this chapter.

(2) "Account owner" means the person designated at the time that an account is opened as having the right to withdraw money from the account before the account is disbursed to or for the benefit of the designated beneficiary.

(3) "Board" means the board of regents of higher education established by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

(4) "Committee" means the family education savings program oversight committee established in 20-25-901.

(5) "Designated beneficiary" means, with respect to an account, the person designated at the time that the account is opened as the person whose higher education expenses are expected to be paid from the account or if this person is replaced in accordance with 15-62-202, the individual replacing the former designated beneficiary.

(6) "Financial institution" means any bank, commercial bank, national bank, savings bank, savings and loan association, credit union, insurance company, trust company, mutual fund, or other similar entity that is authorized to do business in this state.

(7) "Higher education institution" means an eligible educational institution as defined in section 529(e)(5) of the Internal Revenue Code, 26 U.S.C. 529(e)(5).

(8) "Member of the family" means, with respect to a designated beneficiary, a member of the family of the designated beneficiary as defined in section 529(e)(2) of the Internal Revenue Code, 26 U.S.C. 529(e)(2).

(9) "Nonqualified withdrawal" means a withdrawal from an account that is not:

(a) a qualified withdrawal;

(b) a withdrawal made as the result of the death or disability of the designated beneficiary of an account;

(c) a withdrawal that is made on the account of a scholarship or the allowance or payment described in section 135(d)(1)(B) or (d)(1)(C) of the Internal Revenue Code, 26 U.S.C. 135(d)(1)(B) or (d)(1)(C), and that is received by the designated beneficiary; or

(d) a rollover or change of designated beneficiary described in 15-62-202.

(10) "Program" means the family education savings program established pursuant to 15-62-201. The program must be structured to permit the long-term accumulation of savings that can be used to finance all or a share of the costs of higher education.

(11) "Qualified higher education expenses" means qualified higher education expenses as defined in section 529(e)(3) of the Internal Revenue Code, 26 U.S.C. 529(e)(3).

(12) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account.

History: En. Sec. 3, Ch. 540, L. 1997; amd. Sec. 5, Ch. 468, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 468 in definition of higher education institution after "means" substituted "an eligible educational institution as defined in section 529(e)(5) of the Internal Revenue Code, 26 U.S.C. 529(e)(5)" for "(a) an institution described in the Higher Education Act of 1965, 20 U.S.C. 1141(a) and 1088(a); or

(b) an area vocational educational school, as defined in section 521(3) of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2471(3)(C) and (3)(D), that is located in this state"; in definition of member of the family after "means" substituted "with respect to a designated beneficiary, a member of the family of the designated beneficiary as defined in section 529(e)(2) of the Internal Revenue Code, 26 U.S.C. 529(e)(2)" for "(a) an ancestor of a person;

(b) the spouse of a person;

(c) a lineal descendant, including a legally adopted child, of a person, of a person's spouse, or of a parent of a person; or

(d) the spouse of any lineal descendant described in subsection (8)(c)"; in definition of nonqualified withdrawal at end of (d) after "beneficiary" inserted "described in 15-62-202"; in definition of qualified higher education expenses after "means" substituted "qualified higher education expenses as defined in section 529(e)(3) of the Internal Revenue Code, 26 U.S.C. 529(e)(3)" for "tuition and fees required for enrollment or attendance of a designated beneficiary at a higher education institution"; and made minor changes in style. Amendment effective April 30, 2001.

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

Part 2
Family Education Savings Program
Account — Administration

15-62-201. Program requirements — application — establishment of account — qualified and nonqualified withdrawal — penalties. (1) A person who wishes to deposit money into an account to pay the qualified higher education expenses of a designated beneficiary shall:

(a) complete an application on the form prescribed by the board that includes:

(i) the name, address, and social security number or employer identification number of the contributor;

(ii) the name, address, and social security number of the account owner if the account owner is not the contributor;

(iii) the name, address, and social security number of the designated beneficiary;

(iv) the certification relating to no excess contributions adopted by the board pursuant to 20-25-902; and

(v) any other information required by the board;

(b) pay the one-time application fee established by the board;

(c) make the minimum contribution required by the board or by opening an account; and

(d) designate the type of account to be opened if more than one type of account is offered.

(2) A person shall make contributions to an opened account in cash.

(3) An account owner may withdraw all or part of the balance from an account under rules prescribed by the board to enable the board or program manager to determine if a withdrawal is a nonqualified withdrawal or a qualified withdrawal. The rules may require that:

(a) account owners seeking to make a qualified withdrawal or other withdrawal that is not a nonqualified withdrawal shall provide certifications, copies of bills for qualified higher education expenses, or other supporting material;

(b) qualified withdrawals from an account be made only by a check payable jointly to the designated beneficiary and a higher education institution; and

(c) withdrawals not meeting certain requirements be treated as nonqualified withdrawals by the program manager, and if these withdrawals are not nonqualified withdrawals, the account owner shall seek refunds of penalties directly from the board.

(4) If a nonqualified withdrawal is made from an account, an amount equal to 10% of the portion of the proposed withdrawal that would constitute income as determined in accordance with section 529 of the Internal Revenue Code, 26 U.S.C. 529, must be withheld as a penalty and paid to the board for use in operating and marketing the program and for state student financial aid.

(5) The board, by rule, shall increase the percentage of the penalty prescribed in subsection (4) or change the basis of this penalty if the board determines that the amount of the penalty must be increased to constitute a minimum penalty for purposes of qualifying the program as a qualified state tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529.

(6) The board may decrease the percentage of the penalty prescribed in subsection (4) if:

(a) the penalty is greater than is required to constitute a minimum penalty for purposes of qualifying the program as a qualified state tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529; or

(b) the penalty, when combined with other revenue generated under this chapter, is producing more revenue than is required to cover the costs of operating and marketing the program and to recover any costs not previously recovered.

(7) If an account owner makes a nonqualified withdrawal and a penalty amount is not withheld pursuant to subsection (4) or the amount withheld was less than the amount required to be withheld under that subsection for nonqualified withdrawals, the account owner shall pay:

(a) the unpaid portion of the penalty to the board at the same time that the account owner files a federal and state income tax return for the taxable year of the withdrawal; or

(b) if the account owner does not file a return, the unpaid portion of the penalty on the due date for federal and state income tax returns, including any authorized extensions.

(8) Each account must be maintained separately from each other account under the program.

(9) Separate records and accounting must be maintained for each account for each designated beneficiary.

(10) A contributor to, account owner of, or designated beneficiary of an account may not direct the investment of any contributions to any account or the earnings generated by the account and may not pledge the interest of an account or use an interest in an account as security for a loan.

(11) If the board terminates the authority of a financial institution to hold accounts and accounts must be moved from that financial institution to another financial institution, the board shall select the financial institution and type of investment to which the balance of the account is moved unless the internal revenue service provides guidance stating that allowing the account owner to select among several financial institutions that are then contractors would not cause a plan to cease to be a qualified state tuition plan.

(12) If there is any distribution from an account to any person or for the benefit of any person during a calendar year, the distribution must be reported to the internal revenue service and the account owner or the designated beneficiary to the extent required by federal law.

(13) The financial institution shall provide statements to each account owner at least once each year within 31 days after the 12-month period to which they relate. The statement must identify the contributions made during a preceding 12-month period, the total contributions made through the end of the period, the value of the account as of the end of this period, distributions made during this period, and any other matters that the board requires be reported to the account owner.

(14) Statements and information returns relating to accounts must be prepared and filed to the extent required by federal or state tax law or by administrative rule.

(15) A state or local government or organizations described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), may, without designating a designated beneficiary, open and become the account owner of an account to fund scholarships for persons whose identity will be determined after an account is opened.

History: En. Sec. 4, Ch. 540, L. 1997; amd. Sec. 6, Ch. 468, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 468 in (4) deleted former second sentence that read: "A nonqualified withdrawal constitutes income for Montana purposes to the extent it was previously deducted from income in calculating Montana individual income taxes." Amendment effective April 30, 2001.

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

15-62-202. Changes in designated beneficiary. (1) An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the former designated beneficiary in accordance with procedures established by the board.

(2) If requested by an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account.

(3) Changes in designated beneficiaries and rollovers under this section are not permitted if the changes or rollovers would violate:

(a) the excess contributions provisions adopted by the board pursuant to 20-25-902; or

(b) the investment choice provisions of 15-62-201(10).

History: En. Sec. 5, Ch. 540, L. 1997.

15-62-203. Selection of financial institution as account depository and manager — contract — termination. (1) The board shall implement the program through the use of one or more financial institutions to act as the depository and manager. Under the program, a person may establish accounts at the depository.

(2) The committee shall solicit proposals from financial institutions to act as the depositories and managers of the program. Financial institutions that submit proposals shall describe the financial instruments that will be held in accounts.

(3) On the recommendation of the committee, the board shall select as program depositories and managers the financial institution or institutions from among bidding financial institutions that demonstrate the most advantageous combination, both to potential program participants and to this state, of:

(a) financial stability and integrity;

(b) the safety of the investment instruments being offered, taking into account any insurance provided with respect to these instruments;

(c) the ability of the investment instruments to track estimated costs of higher education as calculated by the board and provided by the financial institution to the account holder;

(d) the ability of the financial institutions, directly or through a subcontract, to satisfy recordkeeping and reporting requirements;

(e) the financial institution's plan for promoting the program and the investment that it is willing to make to promote the program;

(f) the fees, if any, proposed to be charged to persons for maintaining accounts;

(g) the minimum initial deposit and minimum contributions that the financial institution will require and the willingness of the financial institution or its subcontractors to accept contributions through payroll deduction plans and other deposit plans; and

(h) any other benefits to this state or its residents contained in the proposal, including an account opening fee payable to the board by the account owner to cover expenses of operation of the program and any additional fee offered by the financial institution for statewide program marketing by the board.

(4) The board shall enter into a contract with a financial institution or, except as provided in subsection (5), into contracts with financial institutions to serve as depositories and program managers.

(5) The committee may select more than one financial institution to serve as depository and program manager. The committee may select more than one kind of investment instrument to be offered through the program. Any decision on the use of multiple financial institutions or multiple investment instruments must take into account:

(a) the requirements for qualifying as a qualified state tuition program under section 529 of the Internal Revenue Code (26 U.S.C. 529);

(b) differing needs of contributors regarding risk and potential return of investment instruments; and

(c) administrative costs and burdens that may be imposed as the result of the decision.

(6) A program manager or its subcontractor shall:

(a) take action required to keep the program in compliance with its contract or the requirements of this chapter to manage the program so that it is treated as a qualified state tuition plan under section 529 of the Internal Revenue Code, 26 U.S.C. 529;

(b) keep adequate records of each account, keep each account segregated from each other account, and provide the board with the information necessary to prepare statements required by 15-62-201(12) through (14) or file these statements on behalf of the board;

(c) compile and total information contained in statements required to be prepared under 15-62-201(12) through (14) and provide these compilations to the board;

(d) if there is more than one program manager, provide the board with the information to assist the board in determining compliance with rules adopted by the board pursuant to 20-25-902;

(e) provide representatives of the board, including other contractors or other state agencies, access to the books and records of the program manager to the extent needed to determine compliance with the contract. At least once during the term of any contract, the board, its contractor, or the state agency responsible for examination oversight of the program manager shall conduct an examination to the extent needed to determine compliance with the contract.

(f) hold all accounts in trust for the benefit of this state and the account owner.

(7) A person may not circulate any description of the program, whether in writing or through the use of any media, unless the board or its designee first approves the description.

(8) A contract executed between the board and a financial institution pursuant to this section must be for a term of at least 3 years and not more than 7 years.

(9) If a contract executed between the board and a financial institution pursuant to this section is not renewed, at the end of the term of the nonrenewed contract:

(a) accounts previously established and held in investment instruments at the financial institution may not be terminated;

(b) additional contributions may be made to the accounts in existence at the time of nonrenewal of a contract; and

(c) new accounts may not be placed with that financial institution unless a new contract is executed.

(10) The board may terminate a contract with a financial institution at any time for good cause on the recommendation of the committee. If a contract is terminated pursuant to this subsection, the board shall take custody of accounts held at that financial institution and shall seek to promptly transfer the accounts to another financial institution that is selected as a program manager and into investment instruments as similar as possible to the original investments.

History: En. Sec. 8, Ch. 540, L. 1997; amd. Sec. 7, Ch. 468, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 468 in (5) near beginning of introductory clause after "one financial institution" substituted "to serve as depository and program manager. The committee may select more than one kind of investment instrument to be offered through the program. Any decision on the use of multiple financial institutions or multiple investment instruments must take into account:

(a) the requirements for qualifying as a qualified state tuition program under section 529 of the Internal Revenue Code (26 U.S.C. 529);

(b) differing needs of contributors regarding risk and potential return of investment instruments; and

(c) administrative costs and burdens that may be imposed as the result of the decision" for "and investment for the program if:

(a) the internal revenue service has provided guidance that giving a contributor a choice of two or more investment instruments under a state plan will not cause the plan to fail to qualify for favorable tax treatment under section 529 of the Internal Revenue Code, 26 U.S.C. 529; and

(b) the committee concludes that the choice of instrument vehicles is in the best interest of program participants and will not interfere with the promotion of the program". Amendment effective April 30, 2001.

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

15-62-204. Repealed. Sec. 8, Ch. 468, L. 2001.

History: En. Sec. 9, Ch. 540, L. 1997; amd. Sec. 39, Ch. 51, L. 1999.

15-62-205. Scholarships and financial aid provisions — exceptions. (1) Except as provided in subsection (2), a student loan program, student grant program, or other financial assistance program established or administered by the state or a financial assistance program administered by a state-supported college or university must treat the balance in an account of which the student is a designated beneficiary as if it were an asset of the parent of the designated beneficiary and not as a scholarship or grant or as an asset of the student for determining a student's or parent's income, assets, or financial need.

(2) This section does not apply if:

(a) federal law requires all or a portion of the amount in an account to be taken into account in a different manner;

(b) federal benefits could be lost if all or a portion of the amount in an account is not taken into account in a different manner; or

(c) a specific grant establishing a financial assistance program requires that all or a portion of the amount in an account be taken into account.

History: En. Sec. 10, Ch. 540, L. 1997.

15-62-206. Limitations. (1) This chapter may not be construed to:

(a) give any designated beneficiary any rights or legal interest with respect to an account unless the designated beneficiary is the account owner;

(b) guarantee that a designated beneficiary will be admitted to a higher education institution or be allowed to continue enrollment at or graduate from a higher education institution located in this state after admission;

(c) establish state residency for a person merely because the person is a designated beneficiary; or

(d) guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified higher education expenses of a designated beneficiary.

(2) This chapter does not establish any obligation of this state or any agency or instrumentality of the state to guarantee for the benefit of any account owner, contributor to an account, or designated beneficiary:

(a) the return of any amounts contributed to an account;

(b) the rate of interest or other return on any account; or

(c) the payment of interest or other return on any account.

(3) Under rules adopted by the board, each contract, application, deposit slip, or other document that may be used in connection with a contribution to an account must clearly indicate that the account is not insured by the state and that the principal deposited or the investment return is not guaranteed by the state.

History: En. Sec. 11, Ch. 540, L. 1997.

15-62-207. Deductions for contributions. An individual who contributes to an account in a tax year is entitled to reduce the individual's adjusted gross income, in accordance with 15-30-111(8), by the amount of the contribution, but not more than $3,000. The contribution must be made to an account owned by the contributor, the contributor's spouse, the contributor's child, or the contributor's stepchild if the stepchild is a Montana resident.

History: En. Sec. 1, Ch. 468, L. 2001.

Compiler's Comments

Effective Date: Section 10, Ch. 468, L. 2001, provided: "[This act] is effective on passage and approval." Approved April 30, 2001.

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

15-62-208. Tax on certain withdrawals of deductible contributions. (1) There is a recapture tax at a rate equal to the highest rate of tax provided in 15-30-103 on the recapturable withdrawal of amounts that reduced adjusted gross income under 15-30-111(8).

(2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross income, all withdrawals must be allocated between income and contributions in accordance with the principles applicable under section 529(c)(3)(A) of the Internal Revenue Code of 1986, 26 U.S.C. 529(c)(3)(A). The portion of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions, if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must be treated as first derived from contributions that reduced adjusted gross income, to the extent of the contributions, and then to contributions that did not reduce adjusted gross income.

(3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account owner and is payable with the income tax payment for the year of the withdrawal or at the time that an income tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

(b) The department may require withholding on recapturable withdrawals from an account that was at one time owned by a Montana resident if the account owner is not a Montana resident at the time of the withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one time owned by a Montana resident must be treated as if the account is owned by a resident of Montana.

(4) For the purposes of this section, all contributions made to accounts by residents of Montana are presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate that all or a portion of the contributions did not reduce adjusted gross income. Contributors who claim deductions for contributions shall report on their Montana income tax returns the amount of deductible contributions made to accounts for each designated beneficiary and the social security number of each designated beneficiary.

(5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a nonqualified withdrawal or a withdrawal or distribution from an account that was opened after the later of:

(a) April 30, 2001; or

(b) the date that is 3 years prior to the date of the withdrawal or distribution.

(6) The department shall use all means available for the administration and enforcement of income tax laws in the administration and enforcement of this section.

History: En. Sec. 2, Ch. 468, L. 2001.

Compiler's Comments

Effective Date: Section 10, Ch. 468, L. 2001, provided: "[This act] is effective on passage and approval." Approved April 30, 2001.

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

15-62-209. Access to records. Information that identifies the contributor, account owner, or designated beneficiary of a family education savings account is exempt from the provisions of 2-6-102 and 2-6-104 and any other provision of law permitting the public inspection or copying of documents. The provisions of this section may not prevent the release of information about a specific designated beneficiary to a higher education institution at which the designated beneficiary is enrolled or to which the designated beneficiary has applied for admission.

History: En. Sec. 3, Ch. 468, L. 2001.

Compiler's Comments

Effective Date: Section 10, Ch. 468, L. 2001, provided: "[This act] is effective on passage and approval." Approved April 30, 2001.

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

CHAPTER 63

FIRST-TIME HOME BUYER SAVINGS ACCOUNT

Part 1 — General Provisions

15-63-101. Short title.
15-63-102. Definitions.

Part 2 — Account Administration

15-63-201. Establishment of account.
15-63-202. Tax exemption — conditions.
15-63-203. Withdrawal of funds from account for purposes other than eligible costs for first-time home purchase.
15-63-204. Administration of account.
15-63-205. False claims prohibited.

Part 1

General Provisions

15-63-101. Short title. This chapter may be cited as the "Montana First-Time Home Buyer Savings Account Act".

History: En. Sec. 1, Ch. 544, L. 1997.

15-63-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Account administrator" means:

(a) a state or federally chartered bank, savings and loan association, credit union, or trust company;

(b) a certified public accountant or a licensed public accountant licensed to practice in this state pursuant to Title 37, chapter 50; or

(c) the account holder.

(2) "Account holder" means an individual who is a resident of this state and who establishes, individually or jointly, a first-time home buyer savings account. The account holder must also be a first-time home buyer. A married taxpayer filing separately may be an account holder if the account is established separately from the taxpayer's spouse. Married taxpayers filing jointly are considered as the account holder.

(3) "Eligible costs" means the down payment and allowable closing costs for the purchase of a single-family residence in Montana by a first-time home buyer.

(4) "First-time home buyer" means an individual who has never owned or purchased under contract for deed, either individually or jointly, a single-family residence in Montana or out-of-state.

(5) "First-time home buyer savings account" or "account" means an account established with an account administrator in this state pursuant to 15-63-201.

(6) "Single-family residence" means an owner-occupied residence in Montana, including a manufactured home, trailer, or mobile home, that is an improvement to real property or a condominium unit that is owned by or that has been purchased under contract for deed by a person, individually or jointly.

History: **En. Sec. 2, Ch. 544, L. 1997.**

Part 2
Account Administration

15-63-201. Establishment of account. A first-time home buyer who is a resident of this state may establish a first-time home buyer savings account for the first-time home buyer, either individually or jointly.

History: **En. Sec. 3, Ch. 544, L. 1997.**

15-63-202. Tax exemption — conditions. (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an account holder to an account and all interest or other income on the principal may be excluded from the adjusted gross income of the account holder and is exempt from taxation, in accordance with 15-30-111(2)(k), as long as the principal and interest or other income is contained within the account or withdrawn only for eligible costs for the purchase of a single-family residence by a first-time home buyer. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than for eligible costs for the purchase of a single-family residence.

(2) (a) An account holder who files singly, head of household, or married filing separately may exclude as an annual contribution in 1 year up to $3,000.

(b) An account holder who files jointly may exclude as annual contribution in 1 year up to $6,000.

(c) There is no limitation on the amount of principal and interest or other income on the principal that may be retained tax-free within an account.

(d) An account holder may not contribute to the first-time home buyer savings account for a period exceeding 10 years.

(3) An account holder may not deduct pursuant to 15-30-121 or exclude pursuant to 15-30-111 an amount representing a loss in the value of an investment contained in an account.

(4) Each year, an account holder may deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the account holder in the year does not exceed the amount specified in subsection (2)(a) or (2)(b). An account holder who deposits more than the amount specified in subsection (2)(a) or (2)(b) into an account in a year may exclude from the account holder's adjusted gross income, in accordance with 15-30-111(2)(k), in a subsequent year any part of the amount specified in subsection (2)(a) or (2)(b) per year not previously excluded.

(5) The transfer of money by a person other than the account holder to the account of an account holder does not subject the account holder to tax liability under this section. Amounts contained within the account of the receiving account holder are subject to the requirements and limitations provided in this section. The person other than the account holder who transfers money to the account is not entitled to the tax exemption under this section.

(6) The account holder who establishes the account, individually or jointly, is the owner of the account. An account holder may withdraw money in an account and deposit the money in another account with a different account administrator or with the same account administrator without incurring tax liability.

(7) The account holder shall use the money in the account for the eligible costs related to the purchase of a single-family residence within 10 years following the year in which the account was established. Any principal and income in the account not expended on eligible costs at the time of purchase of a single-family residence or any principal or income remaining in the account on December 31 of the last year of the 10-year period must be taxed as ordinary income.

(8) The amount of a disbursement of any assets of a first-time home buyer savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an account holder does not subject the account holder to tax liability.

(9) Within 30 days of being furnished proof of the death of the account holder, the account administrator shall distribute the principal and accumulated interest or other income in the account to the estate of the account holder or to a designated pay-on-death beneficiary as provided in 72-6-223.

History: En. Sec. 4, Ch. 544, L. 1997; amd. Sec. 3, Ch. 429, L. 1999.

15-63-203. Withdrawal of funds from account for purposes other than eligible costs for first-time home purchase. (1) An account holder may withdraw money from the first-time home buyer's savings account for any purpose other than eligible costs for the first-time purchase of a single-family residence only on the last business day of the account administrator's business year. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the account holder.

(2) If the account holder withdraws money from the account other than for eligible costs for the purchase of a single-family residence or other than on the last business day of the account administrator's business year, the account administrator shall withhold from the amount of the withdrawal and, on behalf of the account holder, pay as a penalty to the department an amount equal to 10% of the amount of the withdrawal. Payments made to the department pursuant to this section must be deposited in the general fund. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the account holder.

(3) For the purposes of this section, "last business day of the account administrator's business year", as applied to an account administrator who is also the account holder, means the last weekday in December.

History: En. Sec. 5, Ch. 544, L. 1997.

15-63-204. Administration of account. (1) An account administrator shall administer the first-time home buyer savings account from which the payment of eligible costs for the purchase of a single-family residence is made and has a fiduciary duty to the person for whose benefit the account is administered. Except for reporting and remitting of penalties to the department, a financial institution shall administer a first-time home buyer's savings account as a regular deposit. A financial institution is not responsible for the use or applications of funds.

(2) Within 30 days after an account administrator begins to administer an account, the account administrator shall notify in writing each account holder on whose behalf the account administrator administers an account of the date of the last business day of the account administrator's business year.

(3) An account administrator may use funds held in a first-time home buyer savings account only for the purpose of paying the eligible costs of the account holder or paying the expenses of administering the account.

(4) The account holder may submit documentation of eligible costs paid by the account holder in the tax year to the account administrator, and the account administrator shall reimburse the account holder from the account holder's account for eligible costs for the first-time purchase of a single-family residence. The burden of proving that a withdrawal from a first-time home buyer's savings account was made for eligible costs is upon the account holder and not upon the account administrator.

(5) In the case of an account administrator who is also the account holder:

(a) notice by the account administrator to the account holder pursuant to subsection (2) is not required;

(b) the account administrator may not use funds held in an account to pay expenses of administering the account, except that a service fee may be deducted from the account by a financial institution or other holder of the account;

(c) documentation of the segregation of funds in separate accounts and documentation of eligible costs for the purchase of a single-family residence must be maintained but is not required to be submitted to the account administrator;

(d) the account administrator shall file reports as reasonably required by the department; and

(e) the account holder is required to forward the 10% penalty on funds withdrawn for other than eligible costs to the department.

History: En. Sec. 6, Ch. 544, L. 1997; amd. Sec. 4, Ch. 429, L. 1999.

15-63-205. False claims prohibited. A person who knowingly prepares or causes to be prepared a false claim, receipt, statement, or billing to justify the withdrawal of money from an account is subject to the provisions of 15-61-205.

History: En. Sec. 7, Ch. 544, L. 1997.

CHAPTER 64

RESERVED

CHAPTER 65

LODGING FACILITY USE TAX

Part 1 — General Provisions

15-65-101. Definitions.
15-65-102. Rulemaking authority.
15-65-103 through 15-65-110 reserved.
15-65-111. Tax rate.
15-65-112. Collection and reporting.
15-65-113. Audits — records.
15-65-114. Registration number — application to department.
15-65-115. Failure to pay or file — penalty — review — interest.
15-65-116. Credit for overpayment — interest on overpayment.
15-65-117 through 15-65-120 reserved.
15-65-121. Distribution of tax proceeds.
15-65-122. Qualification of nonprofit entities for receipt of funds — limitation on administrative costs.
15-65-123 through 15-65-130 reserved.
15-65-131. State agencies to account for in-state lodging expenditures.
15-65-132 through 15-65-135 reserved.
15-65-136. Terminated.

Part 1

General Provisions

15-65-101. Definitions. For purposes of this part, the following definitions apply:

(1) "Accommodation charge" means the fee charged by the owner or operator of a facility for use of the facility for lodging, including bath house facilities, but excluding charges for meals, transportation, entertainment, or any other similar charges.

(2) (a) "Campground" means a place, publicly or privately owned, used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.

(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.

(3) "Council" means the tourism advisory council established in 2-15-1816.

(4) (a) "Facility" means a building containing individual sleeping rooms or suites, providing overnight lodging facilities for periods of less than 30 days to the general public for compensation. The term includes a facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, or bed and breakfast facility.

(b) The term does not include any health care facility, as defined in 50-5-101, any facility owned by a corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under the age of 18 years for camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

(5) "Nonprofit convention and visitors bureau" means a nonprofit corporation organized under Montana law and recognized by a majority of the governing body in the city, consolidated city-county, resort area, or resort area district in which the bureau is located.

(6) "Regional nonprofit tourism corporation" means a nonprofit corporation organized under Montana law and recognized by the council as the entity for promoting tourism within one of several regions established by executive order of the governor.

(7) "Resort area" means an area established pursuant to 7-6-1508.

(8) "Resort area district" has the meaning provided in 7-6-1531.

History: En. Sec. 1, Ch. 607, L. 1987; amd. Sec. 1, Ch. 195, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 195 in definition of nonprofit convention and visitors bureau near end after "consolidated city-county" inserted "resort area, or resort area district"; inserted definitions of resort area and resort area district; and made minor changes in style. Amendment effective July 1, 2001.

15-65-102. Rulemaking authority. The department of revenue shall adopt such rules as may be necessary to implement and administer this part.

History: En. Sec. 11, Ch. 607, L. 1987.

Cross-References

Adoption of administrative rules, Title 2, ch. 4, part 3.

Rulemaking authority of Department of Commerce, 2-15-1816.

15-65-103 through 15-65-110 reserved.

15-65-111. Tax rate. (1) There is imposed on the user of a facility a tax at a rate equal to 4% of the accommodation charge collected by the facility.

(2) Accommodation charges do not include charges for rooms used for purposes other than lodging.

History: En. Sec. 2, Ch. 607, L. 1987.

15-65-112. Collection and reporting. (1) The owner or operator of a facility shall collect the tax imposed by 15-65-111.

(2) The owner or operator shall report to the department of revenue, at the end of each calendar quarter, the gross receipts collected during that quarter attributable to accommodation charges for the use of the facility. The report is due on or before the last day of the month following the end of the calendar quarter and must be accompanied by a payment in an amount equal to the tax required to be collected under subsection (1).

History: En. Sec. 3, Ch. 607, L. 1987; amd. Sec. 5, Ch. 676, L. 1991.

15-65-113. Audits — records. (1) The department of revenue may audit the books and records of any owner or operator to ensure that the proper amount of tax imposed by 15-65-111 has been collected. An audit may be done on the premises of the owner or operator of a facility or at any other convenient location.

(2) The department may request the owner or operator of a facility to provide the department with books, ledgers, registers, or other documents necessary to verify the correct amount of tax.

(3) The owner or operator of a facility shall maintain and have available for inspection by the department books, ledgers, registers, or other documents showing the collection of accommodation charges for the preceding 5 years.

(4) Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of this part, the amount of tax due under any return must be determined by the department within 5 years after the return is made, and the department thereafter is barred from revising any such return or recomputing the tax due thereon, and no proceeding in court for the collection of the tax may be instituted unless notice of any additional tax is provided within such period.

(5) An application for revision may be filed with the department by an owner or operator of a facility within 5 years from the original due date of the return.

History: En. Sec. 4, Ch. 607, L. 1987.

15-65-114. Registration number — application to department. (1) The owner or operator of a facility shall apply to the department of revenue for a registration number.

(2) The application must be made on a form provided by the department.

(3) Upon completion of the application and delivery of the application to the department, the department must assign a registration number to the owner, operator, or facility, as appropriate.

History: En. Sec. 5, Ch. 607, L. 1987.

15-65-115. Failure to pay or file — penalty — review — interest. (1) An owner or operator of a facility who fails to file the report as required by 15-65-112 must be assessed a penalty as provided in 15-1-216. The department may waive any penalty as provided in 15-1-206.

(2) An owner or operator of a facility who fails to make payment or fails to report and make payment as required by 15-65-112 must be assessed penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(3) (a) If an owner or operator of a facility fails to file the report required by 15-65-112 or if the department determines that the report understates the amount of tax due, the department may determine the amount of the tax due and assess that amount against the owner or operator. The provisions of 15-1-211 apply to any assessment by the department. The taxpayer may seek review of the assessment pursuant to 15-1-211.

(b) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the owner or operator. The tax is due and payable at the expiration of 30 days after the notice and demand were mailed. Interest on any deficiency assessment must be computed as provided in 15-1-216.

History: En. Sec. 6, Ch. 607, L. 1987; amd. Secs. 6, 19, Ch. 676, L. 1991; amd. Sec. 26, Ch. 811, L. 1991; amd. Sec. 45, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-65-116. Credit for overpayment — interest on overpayment. (1) If the department determines that the amount of tax, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer, to the taxpayer's successor through reorganization, merger, or consolidation, or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on unpaid taxes, as provided in 15-1-216, from the due date of the return or from the date of overpayment, whichever is later, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable.

History: **En. Sec. 12, Ch. 676, L. 1991; amd. Sec. 46, Ch. 427, L. 1999.**

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

15-65-117 through 15-65-120 reserved.

15-65-121. *(Temporary)* **Distribution of tax proceeds.** (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The amount of $400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation, deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies, or deposited in the heritage preservation and development account is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for

tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials. *(Terminates July 1, 2007—sec. 3, Ch. 469, L. 2001.)*

15-65-121. *(Effective July 1, 2007)* **Distribution of tax proceeds.** (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

History: En. Sec. 7, Ch. 607, L. 1987; amd. Sec. 15, Ch. 607, L. 1987; amd. Sec. 18, Ch. 83, L. 1989; amd. Sec. 2, Ch. 647, L. 1989; amd. Sec. 1, Ch. 11, Sp. L. July 1992; amd. Sec. 16, Ch. 455, L. 1993; amd. Sec. 1, Ch. 574, L. 1993; amd. Sec. 20, Ch. 18, L. 1995; amd. Sec. 2, Ch. 442, L. 1995; amd. Sec. 11, Ch. 469, L. 1997; amd. Sec. 1, Ch. 490, L. 1999; amd. Sec. 2, Ch. 195, L. 2001; amd. Sec. 1, Ch. 469, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 195 in (1)(e)(ii) in three places after "consolidated city-county" inserted "resort area, or resort area district"; in (2) near beginning and near end after "consolidated city-county" inserted "resort area, or resort area district"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 469 in (1) inserted fifth sentence requiring deposit of $400,000 each year in the Montana heritage preservation and development account and near middle of sixth sentence after "state agencies" inserted "or deposited in the heritage preservation and development account"; and made minor changes in style. Amendment effective April 30, 2001, and terminates July 1, 2007.

15-65-122. Qualification of nonprofit entities for receipt of funds — limitation on administrative costs. (1) The department of revenue shall provide the council with quarterly reports of regional tax proceeds and tax proceeds of cities, consolidated city-counties, resort areas, and resort area districts that qualify for disbursement of funds under 15-65-121.

(2) Funds may not be disbursed to a regional nonprofit tourism corporation or nonprofit convention and visitors bureau until that entity has submitted an annual marketing plan to the council and that plan has been approved by the council.

(3) A maximum of 20% of the funds received by a regional nonprofit tourism corporation or nonprofit convention and visitors bureau may be used for administrative purposes as defined by the council.

History: En. Sec. 8, Ch. 607, L. 1987; amd. Sec. 3, Ch. 195, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 195 in (1) near end after "consolidated city-counties" inserted "resort areas, and resort area districts"; and made minor changes in style. Amendment effective July 1, 2001.

15-65-123 through 15-65-130 reserved.

15-65-131. State agencies to account for in-state lodging expenditures. Each state agency shall account for in-state lodging expenditures in a manner that will enable the department to determine total expenditures for in-state lodging by state agencies in order to make an allocation of a portion of the tax proceeds imposed by 15-65-111 to the appropriate fund or funds as provided in 15-65-121. Unless prohibited under terms of original receipt of the funds used to pay the lodging facility use tax, each fund shall reimburse the state general fund for the deposit made pursuant to 15-65-121.

History: En. Sec. 1, Ch. 647, L. 1989; amd. Sec. 2, Ch. 490, L. 1999.

15-65-132 through 15-65-135 reserved.

15-65-136. Terminated. Sec. 39, Ch. 15, Sp. L. July 1992.

History: En. Sec. 15, Ch. 15, Sp. L. July 1992; amd. Sec. 17, Ch. 455, L. 1993.

CHAPTERS 66 THROUGH 69

RESERVED

CHAPTER 70

GASOLINE AND VEHICLE FUELS TAXES

Part 1 — General Provisions

15-70-101. Disposition of funds.
15-70-102. Allocation of funds — participation in railroad grade crossing protection.
15-70-103. Time of mailing and filing.
15-70-104. Rules to be established by department.
15-70-105. Writeoff of collection of tax, penalty, or interest — rules.
15-70-106 and 15-70-107 reserved.
15-70-108. Payment of taxes by negotiable instrument.
15-70-109 reserved.
15-70-110. Authority to collect delinquent motor fuel taxes — offset — hearing.
15-70-111. Judicial review and appeals.
15-70-112. Definitions.
15-70-113. Total remittance payable by electronic funds transfer.
15-70-114. Electronic filing of tax returns and required information.
15-70-115. Rules.
15-70-116 through 15-70-120 reserved.
15-70-121. International Fuel Tax Agreement.
15-70-122. Collection of fuel tax.

15-70-123. Report by unlicensed petroleum dealer — definition — penalty.
15-70-124. Agreements with other governmental entities relating to collection of certain fuel taxes.
15-70-125. Highway nonrestricted account.

Part 2 — Basic Gasoline License Tax

15-70-201. Definitions.
15-70-202. License and security of gasoline distributors — denial or revocation of license.
15-70-203. Repealed.
15-70-204. Gasoline license tax — rate.
15-70-205. Distributor's statement and payment — confidentiality.
15-70-206. Recordkeeping requirements.
15-70-207. Invoice of distributors and aviation dealers.
15-70-208. Examination of records.
15-70-209. Information reports — confidentiality.
15-70-210. Tax penalty for delinquency.
15-70-211. Warrant for distraint.
15-70-212. Statute of limitations.
15-70-213 through 15-70-220 reserved.
15-70-221. Refund or credit authorized.
15-70-222. Required records.
15-70-223. Estimate allowed for agricultural use — seller's signed statement acceptable on keylock or cardtrol purchases.
15-70-224. Determination of highway use.
15-70-225. Application for refund or credit — filing — correction by department.
15-70-226. Approval or rejection of claim.
15-70-227 through 15-70-230 reserved.
15-70-231. Unlawful use of aviation fuel.
15-70-232. Penalties.
15-70-233. Improperly imported fuel — seizure.
15-70-234. Cooperative agreement — motor fuels taxes.
15-70-235. Tribal motor fuels administration account.
15-70-236. Tribal motor fuels tax account.
15-70-237 through 15-70-240 reserved.
15-70-241. Terminated.
15-70-242. Civil penalty.
15-70-243 and 15-70-244 reserved.
15-70-245. Tax label on ethanol pumps.

Part 3 — Special Fuels Use Tax

15-70-301. Definitions.
15-70-302. Special fuel user's permits required — exceptions.
15-70-303. Application for permit.
15-70-304. Bonding, release of surety, and additional bond.
15-70-305. Issuance of permit — grounds for refusal — hearing.
15-70-306. Revocation, suspension, and cancellation.
15-70-307. Surrender of permit upon use discontinuance.
15-70-308. Repealed.
15-70-309. Repealed.
15-70-310 reserved.
15-70-311. Special fuel user's temporary trip permits — nonresident agricultural harvesting equipment special fuel permit.
15-70-312. Fees for temporary permits — duration of temporary permits.
15-70-313. Department to furnish forms.
15-70-314. Penalty for operation without temporary permit — compliance bond — policy continued.
15-70-315. Repealed.
15-70-316. Repealed.
15-70-317 through 15-70-320 reserved.
15-70-321. Tax on special fuel and volatile liquids.
15-70-322. Repealed.
15-70-323. Special fuel user's records.
15-70-324. Examination of records — enforcement of part.
15-70-325. Returns.
15-70-326. Computation.
15-70-327. Payment — deductions.
15-70-328. Credits.
15-70-329. Procedures for credits — deadline.
15-70-330. Special fuel penalties.
15-70-331. Deficiency.

15-70-332. Determination if no return made.
15-70-333. Fraudulent return — penalty.
15-70-334. Warrant for distraint.
15-70-335. Statute of limitation.
15-70-336. Criminal penalties.
15-70-337 through 15-70-340 reserved.
15-70-341. License and security of special fuel distributors — denial or revocation of license — reissuance fee.
15-70-342. Repealed.
15-70-343. Special fuel license tax — rate.
15-70-344. Distributor's statement and payment — confidentiality.
15-70-345. Recordkeeping requirements.
15-70-346. Terminated.
15-70-347. Terminated.
15-70-348. Invoice of distributors.
15-70-349. Examination of records.
15-70-350 reserved.
15-70-351. Information reports — penalty — confidentiality.
15-70-352. Penalties for delinquency.
15-70-353. Fraudulent returns — penalty.
15-70-354. Warrant for distraint.
15-70-355. Statute of limitations.
15-70-356. Refund or credit authorized.
15-70-357. Improperly imported fuel — seizure.
15-70-358 through 15-70-360 reserved.
15-70-361. Required records.
15-70-362. Estimate allowed for agricultural use — seller's signed statement acceptable on keylock or cardtrol purchases.
15-70-363. Determination of highway use.
15-70-364. Application for refund or credit — filing — correction by department.
15-70-365. Approval or rejection of claim.
15-70-366. Penalties.
15-70-367 through 15-70-369 reserved.
15-70-370. Tax label on biodiesel pumps.
15-70-371. Marking of dyed diesel fuel pumps.
15-70-372. Civil penalty.

Part 4 reserved

Part 5 — Alcohol Tax Incentive and Administration

15-70-501. Short title.
15-70-502. Purpose.
15-70-503. Definitions.
15-70-504 through 15-70-510 reserved.
15-70-511. Licensing of alcohol distributors.
15-70-512. Distributor's statement.
15-70-513. Recordkeeping requirements.
15-70-514. Examination of records.
15-70-515 through 15-70-520 reserved.
15-70-521. Denaturing alcohol — refund authorized.
15-70-522. Tax incentive for production of alcohol — written plan required — reservation of incentives — rules.
15-70-523. Application for payment of tax incentive.
15-70-524 through 15-70-526 reserved.
15-70-527. Penalty for failure to file.

Part 6 reserved

Part 7 — Compressed Natural Gas Tax

15-70-701. Definitions.
15-70-702. Compressed natural gas dealer's or liquefied petroleum gas dealer's license.
15-70-703. Application for license.
15-70-704. Bonding, release of surety, and additional bond.
15-70-705. Issuance of license — grounds for refusal — hearing.
15-70-706. Revocation of license — notice.
15-70-707. Cancellation of license upon surrender.
15-70-708 through 15-70-710 reserved.
15-70-711. Tax on compressed natural gas — tax on liquefied petroleum gas.
15-70-712. Recordkeeping.
15-70-713. Examination of records — enforcement — reciprocity.
15-70-714. Returns required — payment.

15-70-715. Penalties for refusal or failure to file return or pay tax when due.
15-70-716. Deficiency — penalty.
15-70-717. Determination if no return made — penalty — presumption.
15-70-718. Fraudulent return — penalty.
15-70-719. Warrant for distraint.
15-70-720. Statute of limitations.

Chapter Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.
Local option motor fuel excise tax, Title 7, ch. 14, part 3.
Interstate cooperative agreements for collection of taxes and fees, 60-2-311.

Part 1
General Provisions

15-70-101. Disposition of funds. (1) All taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be placed in a highway revenue account in the state special revenue fund to the credit of the department of transportation. All interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account. Those funds allocated to cities, towns, counties, and consolidated city-county governments in this section must, in accordance with the provisions of 15-1-501, be paid by the department of transportation from the state special revenue fund to the cities, towns, counties, and consolidated city-county governments.

(2) The amount of $16,766,000 of the taxes collected under this chapter is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties, incorporated cities and towns, and consolidated city-county governments in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (2)(a) through (2)(c):

(a) The amount of $100,000 must be designated for the purposes and functions of the Montana local technical assistance transportation program in Bozeman.

(b) The amount of $6,306,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the national highway system and the primary system, bears to the total rural road mileage in the state, exclusive of the national highway system and the primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state.

(c) The amount of $10,360,000 must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the national highway system and the primary system, within corporate limits bears to the total street and alley mileage, exclusive of the national highway system and primary system, within the corporate limits of all cities and towns in Montana.

(3) (a) For the purpose of allocating the funds in subsections (2)(b) and (2)(c) to a consolidated city-county government, each entity must be considered to have separate city and county boundaries. The city limit boundaries are the last official city limit boundaries for the former city unless revised boundaries based on the location of the urban area have been approved by the department of transportation and must be used to determine city and county populations and road mileages in the following manner:

(i) Percentage factors must be calculated to determine separate populations for the city and rural county by using the last official decennial federal census population figures that recognized an incorporated city and the rural county. The factors must be based on the ratio of the city to the rural county population, considering the total population in the county minus the population of any other incorporated city or town in the county.

(ii) The city and county populations must be calculated by multiplying the total county population, as determined by the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census, minus the population of any other incorporated city or town in that county, by the factors established in subsection (3)(a)(i).

(b) The amount allocated by this method for the city and the county must be combined, and single monthly payments must be made to the consolidated city-county government.

(4) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, county, or consolidated city-county government might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the primary or secondary highway system or urban extensions to those systems. The governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

(5) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

(6) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined annually for counties and biennially for cities according to the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(7) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, counties, and consolidated city-county governments to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(8) Except by a town or third-class city as provided in subsection (4), the funds authorized by this section may not be used for the purchase of capital equipment.

(9) Funds authorized by this section must be used for construction and maintenance programs.

History: En. Sec. 11, Ch. 162, L. 1955; amd. Sec. 213, Ch. 147, L. 1963; amd. Sec. 2, Ch. 6, Ex. L. 1967; amd. Sec. 2, Ch. 355, L. 1969; amd. Sec. 1, Ch. 384, L. 1971; amd. Sec. 1, Ch. 338, L. 1973; amd. Sec. 1, Ch. 330, L. 1974; amd. Sec. 2, Ch. 514, L. 1975; amd. Sec. 3, Ch. 34, L. 1977; R.C.M. 1947, 84-1840; amd. Sec. 4, Ch. 632, L. 1979; amd. Sec. 2, Ch. 238, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 624, L. 1983; amd. Sec. 1, Ch. 257, L. 1985; amd. Sec. 12, Ch. 703, L. 1985; amd. Sec. 1, Ch. 292, L. 1987; amd. Sec. 11, Ch. 557, L. 1987; amd. Sec. 1, Ch. 82, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 18, Ch. 455, L. 1993; amd. Sec. 1, Ch. 605, L. 1993; amd. Sec. 1, Ch. 10, Sp. L. November 1993; amd. Sec. 21, Ch. 18, L. 1995; amd. Sec. 10, Ch. 509, L. 1995; amd. Sec. 1, Ch. 239, L. 1997; amd. Sec. 1, Ch. 415, L. 1999; amd. Sec. 12, Ch. 515, L. 1999; amd. Sec. 1, Ch. 158, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 158 in (2)(a) increased amount from $54,000 to $100,000; in (2)(b) decreased amount from $6,323,000 to $6,306,000; in (2)(c) decreased amount from $10,389,000 to $10,360,000; and made minor changes in style. Amendment effective July 1, 2001.

2000 Amendment by Referendum: Chapter 515, L. 1999, in (1) inserted second sentence concerning deposit of interest and income earned on account. Amendment effective January 1, 2001.

Effective Date — Applicability: Section 52, Ch. 515, L. 1999, provided: "(1) If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000.

(2) [Sections 12, 13, and 46] are effective January 1, 2001."

Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.
Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.
Classification of municipalities, 7-1-4111.
Disposition of funds appropriated for public transportation, 7-14-102.
Disposition of gasoline and vehicle fuels taxes, 15-70-101.
Allocation of 1 cent per gallon of aviation fuel tax to Department of Transportation, 15-70-204, 67-1-301.
Gasoline tax net proceeds pledged to payment of general obligation highway bonds, 17-5-507.
Distribution of funds allocated to Department of Transportation, 60-3-201.
Allocation of portion of tax to fund highway system maintenance, 60-3-202.

15-70-102. Allocation of funds — participation in railroad grade crossing protection. (1) The amount determined necessary may be allocated from the state special revenue fund, highway revenue account, for each fiscal year for expenditures and commitments made for participation by the department of transportation with railroads in construction of railroad grade crossing protection on any public highway or road, except those designated on the interstate, primary, or urban systems within the state. The department of transportation shall select those grade crossings in the state that, in the opinion of the department, are most in need of additional crossing protection and shall finance the cost of the improvements solely from this fund.

(2) Signal protection provided under this section is limited to electric or automatic flashing lights or gates, depending on the amount and nature of the hazards present at the crossing, and participation in construction of the signals must be on the same basis and under the same standards as are applicable and used in connection with protection of grade crossings on federal-aid roads within the state. The account may not be used for protection of grade crossings on the secondary system where the protection is considered necessary and when the cost is financed in part with federal-aid highway funds.

(3) In addition to the funds allocated, counties and cities may authorize the use of funds available to counties and cities under the provisions of 15-70-101 for participation in the installation in grade crossing protection within the county or city.

History: En. 84-1840.1 by Sec. 1, Ch. 399, L. 1973; R.C.M. 1947, 84-1840.1; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 11, Ch. 509, L. 1995.

15-70-103. Time of mailing and filing. (1) Any claim, statement, remittance, or other document which is transmitted to this state through the United States mail shall be deemed filed and received by this state on the date shown by the post-office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. Any claim, statement, remittance, or other document which is mailed but not received by this state or where received with a cancellation mark that is illegible, erroneous, or omitted shall be deemed filed and received on the date mailed if the sender establishes by competent evidence that the claim, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing. In cases of such nonreceipt of a claim, statement, remittance, or other document, the sender must file with the state a duplicate within 30 days after written notification is given to the sender by the state of its nonreceipt of such claim, statement, remittance, or other document.

(2) If any claim, statement, remittance, or other document is sent by United States registered mail, certified mail, or certificate of mailing, a record authenticated by the United States post office of such registration, certification, or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance, or other document was mailed to the addressee, and the date of registration, certification, or certificate shall be deemed the postmarked date.

(3) If the date for filing any claim, statement, remittance, or other document falls upon a Saturday, Sunday, or legal holiday, the filing shall be considered timely if done on the next business day. Such reports shall be considered filed or received on the date or as provided in this chapter.

History: Ap. p. Sec. 12, Ch. 369, L. 1969; Sec. 84-1856, R.C.M. 1947; Ap. p. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; Sec. 84-1835, R.C.M. 1947; R.C.M. 1947, 84-1835(part (a)), 84-1856.

Cross-References

Penalty for failure to file within prescribed time, 15-70-330.

15-70-104. Rules to be established by department. (1) The department of transportation shall adopt, publish, and enforce the rules consistent with and necessary for carrying out the provisions of this chapter.

(2) The department may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of:

(a) part 2;

(b) part 3;

(c) part 7; and

(d) the International Fuel Tax Agreement authorized by 15-70-121.

History: (1)En. Sec. 17, Ch. 369, L. 1969; amd. Sec. 100, Ch. 516, L. 1973; Sec. 84-1861, R.C.M. 1947; (2)En. Sec. 9, Ch. 162, L. 1955; amd. Sec. 1, Ch. 106, L. 1967; amd. Sec. 85, Ch. 516, L. 1973; amd. Sec. 2, Ch. 34, L. 1977; Sec. 84-1838, R.C.M. 1947; R.C.M. 1947, 84-1838(part), 84-1861; amd. Sec. 3, Ch. 111, L. 1989; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 18, Ch. 405, L. 1995; amd. Sec. 1, Ch. 236, L. 1997.

15-70-105. Writeoff of collection of tax, penalty, or interest — rules. (1) (a) The department of transportation may write off the collection of any tax, penalty, or interest due to the state under this chapter whenever the department determines that it is not cost-effective for the department to attempt to collect the tax, penalty, or interest.

(b) The department shall establish procedures to determine the cost-effectiveness of collecting the tax, penalty, or interest.

(c) If the department writes off the collection of any tax, penalty, or interest, the department shall place in the taxpayer's file a written justification for the writeoff that includes a determination that attempted collection is not cost-effective.

(2) The department shall adopt rules to establish the procedures to carry out the purposes of this section.

History: En. Sec. 3, Ch. 428, L. 1993.

15-70-106 and 15-70-107 reserved.

15-70-108. Payment of taxes by negotiable instrument. The department of transportation is not bound by conditions pertaining to endorsement by the department that are placed on a negotiable instrument by the maker or drawer, tendered to the department for the payment of a tax liability or other liabilities, unless:

(1) the debtor and the department have previously entered into a written agreement that specifies the amount of the debtor's liability; and

(2) the amount tendered is in accordance with the written agreement.

History: En. Sec. 6, Ch. 158, L. 1995.

15-70-109 reserved.

15-70-110. Authority to collect delinquent motor fuel taxes — offset — hearing. (1) The department of transportation shall collect motor fuel taxes that are delinquent as determined under this chapter.

(2) To collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds due the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a hearing on the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before funds are available for offset.

(5) The department shall provide the taxpayer with notice of the right to request a hearing under the contested case procedures of Title 2, chapter 4, on the matter of the offset action or the department's intent to file a claim on behalf of the taxpayer. A request for hearing must be made within 30 days of the date of the notice. If a hearing is requested, it must be held within 20 days of the request.

History: En. Sec. 7, Ch. 158, L. 1995.

15-70-111. Judicial review and appeals. Any final written determination by the director of the department of transportation under this chapter may be appealed to the state tax appeal board which may, upon the record of a hearing, affirm, modify, or reverse the decision of the department. Any party aggrieved by the decision of the board may petition for judicial review by the district court of Lewis and Clark County, and an appeal may be taken from the judgment of the district court to the supreme court.

History: En. Sec. 12, Ch. 162, L. 1955; amd. Sec. 86, Ch. 516, L. 1973; amd. Sec. 5, Ch. 155, L. 1977; R.C.M. 1947, 84-1841; amd. Sec. 8, Ch. 512, L. 1991.

Cross-References

State Tax Appeal Board, Title 15, ch. 2.
Judicial review of contested cases, 15-2-303.

15-70-112. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of transportation as provided for in 2-15-2501.

(2) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(3) "Taxes" means the taxes provided for in this chapter.

(4) "Total remittance" means taxes, interest, and penalties collected under this chapter and cleanup fees collected by the department as provided in 75-11-314.

History: En. Sec. 4, Ch. 561, L. 1995; amd. Sec. 1, Ch. 77, L. 1999.

15-70-113. Total remittance payable by electronic funds transfer. (1) Total remittance due the state may be paid by electronic funds transfer.

(2) If the payment of total remittance is by electronic funds transfer under this section and the due date falls on a Saturday, Sunday, or legal holiday, the payment must be made on the first business day following the Saturday, Sunday, or legal holiday.

(3) If the payment of the tax due on gasoline or special fuel pursuant to 15-70-205 and 15-70-344 is made by electronic funds transfer, the payment due date is 5 days after the 25th day of each calendar month.

History: En. Sec. 5, Ch. 561, L. 1995; amd. Sec. 2, Ch. 77, L. 1999; amd. Sec. 1, Ch. 110, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 110 near end of (3) substituted "5 days after the 25th day of each calendar month" for "the 28th day of each calendar month". Amendment effective July 1, 2001.

15-70-114. Electronic filing of tax returns and required information. The department may require a person, including an importer, exporter, common carrier, private carrier, or contract carrier, who receives or dispenses fuel and who is licensed or not licensed under this chapter, to file tax returns and information required by the department in an approved, computer-generated, magnetic media data format.

History: En. Sec. 6, Ch. 561, L. 1995; amd. Sec. 3, Ch. 77, L. 1999.

15-70-115. Rules. The department shall adopt rules necessary to implement 15-70-112 through 15-70-115, including but not limited to rules:

(1) coordinating the filing of tax returns by electronic means with the payment of total remittance by electronic funds transfer;

(2) specifying the form and content of electronic funds transfer messages in order to ensure the proper receipt and crediting of the payment of total remittance; and

(3) specifying the form and content of information required by the department in an approved, computer-generated, magnetic media data format in order to ensure the proper receipt of the information.

History: En. Sec. 7, Ch. 561, L. 1995; amd. Sec. 4, Ch. 77, L. 1999.

15-70-116 through 15-70-120 reserved.

15-70-121. International Fuel Tax Agreement. (1) The department of transportation may enter into the International Fuel Tax Agreement for audits, exchange of information, and collection and distribution of motor fuel taxes pertaining to users of motor fuel in fleets of motor vehicles operated or intended to operate across jurisdictional boundaries. The International

Fuel Tax Agreement is not effective unless it is in writing and is signed by the department and the department has adopted rules implementing the agreement.

(2) The agreement may determine:

(a) the base jurisdiction for motor fuel users;

(b) motor fuel user records requirements;

(c) audit procedures;

(d) procedures for the exchange of information;

(e) persons eligible for tax licensing;

(f) the definition of qualified motor vehicles;

(g) bonding requirements;

(h) reporting requirements and periods;

(i) uniform penalty and interest rates for late reporting or payment of taxes;

(j) methods for collecting and forwarding of motor fuel taxes and penalties to another jurisdiction; and

(k) other provisions to facilitate the administration of the agreement.

(3) The department may, as required by the terms of the agreement, forward to officers of another jurisdiction any information in its possession relative to the manufacture, receipt, sale, use, transportation, or shipment of motor fuel. The department may disclose to officers of another jurisdiction the location of offices, motor vehicles, and other real and personal property of users of motor fuel.

(4) The agreement may provide each jurisdiction authority to audit the records of persons based in the jurisdiction to determine if the motor fuel taxes due each jurisdiction are properly reported and paid. Each jurisdiction shall forward the findings of the audits performed on persons based in the jurisdiction to each jurisdiction in which the person has taxable use of motor fuel. For a person not based in Montana who has taxable use of motor fuel in Montana, the department may serve the audit findings received from another jurisdiction in the form of an assessment on the person, as though an audit was conducted by the department.

(5) The agreement entered into pursuant to this section does not preclude the department from auditing the records of any person covered by the provisions of this chapter.

(6) If the specific requirements of the agreement, as the agreement reads on the effective date of adoption by the department, differ from the general provisions of this chapter or other rules promulgated by the department, the rules implementing the cooperative agreement prevail.

(7) The legal remedies for a person served with an order or assessment under this section are as prescribed in this chapter.

(8) As used in this section:

(a) "agreement" means the International Fuel Tax Agreement provided for in this section; and

(b) "motor fuel" means gasoline as defined in 15-70-201 and special fuel as defined in 15-70-301.

History: **En. Secs. 1, 2, Ch. 111, L. 1989; amd. Sec. 8, Ch. 512, L. 1991.**

15-70-122. Collection of fuel tax. The department of transportation may establish procedures under the International Fuel Tax Agreement to provide for the billing, collection, and administration of fuel taxes for those owners who proportionally register their fleet vehicles through the department under 61-3-711 through 61-3-733.

History: **En. Sec. 5, Ch. 111, L. 1989; amd. Secs. 3, 8, Ch. 512, L. 1991.**

15-70-123. Report by unlicensed petroleum dealer — definition — penalty. (1) The department of transportation may require a petroleum dealer who is not licensed by the department under Title 15, chapter 70, to file, within 30 days of the end of a quarter, on a form prescribed by the department a report of the amount of fuel received and sold during the quarter. The report must also contain other information as required by the department.

(2) As used in this section, "petroleum dealer" means a dealer who:

(a) is directly or indirectly engaged in delivering, transporting, or distributing gasoline, aviation gasoline, special fuel, liquefied petroleum gas (LPG), or compressed natural gas (CNG) in this state; or

(b) offers or advertises to sell, refine, manufacture, or store gasoline, aviation gasoline, special fuel, liquefied petroleum gas (LPG), or compressed natural gas (CNG) in this state.

(3) A petroleum dealer who fails to file the report required by subsection (1) shall be fined $50 for the first offense, $75 for the second offense, and $100 for the third and each subsequent offense.

History: En. Sec. 1, Ch. 34, L. 1993; amd. Sec. 1, Ch. 340, L. 1999.

15-70-124. Agreements with other governmental entities relating to collection of certain fuel taxes. (1) The department of transportation may enter into agreements relating to the administration and taxation of gasoline, special fuels, and liquefied petroleum gas with state agencies of this state and other states, agencies of the federal government, and agencies of foreign governments and provinces.

(2) The agreements may cover audits, exchange of information, licensure of sellers and users, distribution, and other matters that the department considers necessary for the administration of the taxation of gasoline, special fuels, and liquefied petroleum gas. In an agreement, the department may not delegate powers to another governmental entity that involve levying fines, forfeitures, or penalties or that allow the other governmental entity to revoke or otherwise impair a license or permit issued by the department.

History: En. Sec. 1, Ch. 438, L. 1993.

15-70-125. Highway nonrestricted account. There is a highway nonrestricted account in the state special revenue fund. All interest and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the provisions of 15-1-501, be placed in the highway nonrestricted account. Beginning July 1, 2001, all interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account.

History: En. Sec. 12, Ch. 509, L. 1995; amd. Sec. 83, Ch. 42, L. 1997; amd. Sec. 12, Ch. 422, L. 1997; amd. Sec. 13, Ch. 515, L. 1999.

Compiler's Comments

2000 Amendment by Referendum: Chapter 515, L. 1999, inserted third sentence concerning deposit of interest and income earned on account. Amendment effective January 1, 2001.

Effective Date — Applicability: Section 52, Ch. 515, L. 1999, provided: "(1) If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000.

(2) [Sections 12, 13, and 46] are effective January 1, 2001."

Part 2
Basic Gasoline License Tax

Part Cross-References

Local option motor fuel excise tax, Title 7, ch. 14, part 3.

15-70-201. *(Temporary)* **Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks, gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline imported into this state and placed in storage at refineries or pipeline

terminals is considered to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) (a) "Gasoline" includes:

(i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

(10) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

(12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (9) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(14) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(15) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state.

15-70-201. *(Effective on occurrence of contingency)* **Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks, gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline imported into this state and placed in storage at refineries or pipeline terminals is considered to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) "Gasohol" means a fuel blend containing at least 10% alcohol, with the balance being gasoline and other additives. Gasohol is also known as "E-10".

(10) (a) "Gasoline" includes:

(i) all petroleum products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) except for alcohol blended into gasohol, any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

(11) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(12) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

(13) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (10) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(14) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(15) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(16) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state. *(Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)*

15-70-201. *(Effective July 1 of fourth year following date of occurrence of contingency)* **Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks, gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline imported into this state and placed in storage at refineries or pipeline terminals is considered to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) (a) "Gasoline" includes:

(i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

(10) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

(12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (9) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(14) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(15) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state.

History: En. Sec. 2, Ch. 369, L. 1969; amd. Sec. 1, Ch. 13, L. 1971; amd. Sec. 1, Ch. 204, L. 1971; R.C.M. 1947, 84-1846; amd. Sec. 1, Ch. 576, L. 1979; amd. Sec. 1, Ch. 627, L. 1979; amd. Sec. 1, Ch. 514, L. 1983; amd. Sec. 1, Ch. 697, L. 1985; amd. Sec. 4, Ch. 220, L. 1987; amd. Sec. 1, Ch. 8, L. 1989; amd. Sec. 1, Ch. 231, L. 1993; amd. Sec. 1, Ch. 642, L. 1993; amd. Sec. 1, Ch. 158, L. 1995; amd. Sec. 2, Ch. 236, L. 1997; amd. Sec. 2, Ch. 461, L. 1999; amd. Sec. 1, Ch. 568, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 568 inserted definition of gasohol; in definition of gasoline at beginning of (a)(i) after "all" inserted "petroleum" and at beginning of (a)(ii) inserted "except for alcohol blended into gasohol"; and made minor changes in style. Amendment effective on occurrence of contingency.

Termination Provision Repealed: Section 1, Ch. 127, L. 2001, repealed sec. 7, Ch. 461, L. 1999, which terminated the amendments to this section June 30, 2001. Effective March 26, 2001.

Contingent Effective Date: Section 12, Ch. 568, L. 2001, provided: "[This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with."

Contingent Termination: Section 13, Ch. 568, L. 2001, provided: "[This act] terminates June 30 of the fourth year following [the effective date of this act]." Effective on occurrence of contingency.

15-70-202. *(Temporary)* **License and security of gasoline distributors — denial or revocation of license.** (1) (a) Each gasoline distributor, including an exporter and importer, as those terms are defined in 15-70-201, prior to the commencement of doing business, shall file:

(i) an application for a license with the department on forms prescribed and furnished by the department setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of gasoline taxes that the distributor will pay to this state each month.

(ii) The minimum required security for a distributor who imports or exports gasoline, or both, is $25,000.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or canceled.

(2) The department may deny the issuance of a gasoline distributor license or revoke a gasoline distributor license if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the gasoline license tax.

(3) If an application for a gasoline distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

(4) As used in this section "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) a deposit made by the distributor with the department, under the conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(5) Failure to obtain a gasoline distributor license as required in this section subjects the distributor to the provisions of 15-70-233 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(6) The owner of a commercial motor vehicle that is engaged in transporting fuel for a distributor is not subject to the provisions of this section.

15-70-202. *(Effective on occurrence of contingency)* **License and security of gasoline distributors — denial or revocation of license.** (1) (a) Each gasoline distributor, including an exporter and importer, as those terms are defined in 15-70-201, prior to the commencement of doing business, shall file:

(i) an application for a license with the department on forms prescribed and furnished by the department setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of gasoline taxes that the distributor will pay to this state each month.

(ii) The minimum required security for a distributor who imports or exports gasoline, or both, is $25,000.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or canceled.

(2) The department may deny the issuance of a gasoline distributor license or revoke a gasoline distributor license if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the gasoline license tax.

(3) If an application for a gasoline distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

(4) As used in this section "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) a deposit made by the distributor with the department, under the conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(5) Failure to obtain a gasoline distributor license as required in this section subjects the distributor to the provisions of 15-70-233 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(6) The owner of a commercial motor vehicle that is engaged in transporting fuel for a distributor is not subject to the provisions of this section.

(7) A distributor who blends gasohol must be licensed with the department. If a distributor cannot be licensed, the distributor is required to buy preblended gasohol. *(Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)*

15-70-202. *(Effective July 1 of fourth year following date of occurrence of contingency)* **License and security of gasoline distributors — denial or revocation of license.** (1) (a) Each gasoline distributor, including an exporter and importer, as those terms are defined in 15-70-201, prior to the commencement of doing business, shall file:

(i) an application for a license with the department on forms prescribed and furnished by the department setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of gasoline taxes that the distributor will pay to this state each month.

(ii) The minimum required security for a distributor who imports or exports gasoline, or both, is $25,000.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or canceled.

(2) The department may deny the issuance of a gasoline distributor license or revoke a gasoline distributor license if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the gasoline license tax.

(3) If an application for a gasoline distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

(4) As used in this section "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) a deposit made by the distributor with the department, under the conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(5) Failure to obtain a gasoline distributor license as required in this section subjects the distributor to the provisions of 15-70-233 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(6) The owner of a commercial motor vehicle that is engaged in transporting fuel for a distributor is not subject to the provisions of this section.

History: En. Sec. 13, Ch. 369, L. 1969; amd. Sec. 98, Ch. 516, L. 1973; R.C.M. 1947, 84-1857; amd. Sec. 1, Ch. 609, L. 1979; amd. Sec. 2, Ch. 514, L. 1983; amd. Sec. 2, Ch. 8, L. 1989; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 2, Ch. 231, L. 1993; amd. Sec. 3, Ch. 236, L. 1997; amd. Sec. 1, Ch. 37, L. 1999; amd. Sec. 1, Ch. 142, L. 2001; amd. Sec. 2, Ch. 568, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 142 in (1)(b)(i) at beginning inserted exception clause; inserted (1)(b)(ii) regarding minimum required security for distributor of gasoline; inserted (2) regarding denial and revocation of gasoline distributor license; inserted (3) regarding appeal of denial or revocation of gasoline distributor license; inserted (6) providing exception for owner of commercial motor vehicle under certain conditions; and made minor changes in style. Amendment effective July 1, 2001.

(Version effective on occurrence of contingency) Chapter 568 inserted (7) requiring licensing of a distributor who blends gasohol and requiring the distributor to buy preblended gasohol if the distributor cannot be licensed. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 12, Ch. 568, L. 2001, provided: "[This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with."

Contingent Termination: Section 13, Ch. 568, L. 2001, provided: "[This act] terminates June 30 of the fourth year following [the effective date of this act]." Effective on occurrence of contingency.

15-70-203. Repealed. Sec. 5, Ch. 37, L. 1999.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(6); amd. Sec. 1, Ch. 205, L. 1989; amd. Sec. 8, Ch. 512, L. 1991.

15-70-204. *(Temporary)* **Gasoline license tax — rate.** (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1).

15-70-204. *(Effective on occurrence of contingency)* **Gasoline license tax — rate.** (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) Gasohol, as defined in 15-70-201, is subject to 85% of the tax imposed in subsection (1)(b). *(Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)*

15-70-204. *(Effective July 1 of fourth year following date of occurrence of contingency)* **Gasoline license tax — rate.** (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1).

History: En. Sec. 3, Ch. 369, L. 1969; amd. Sec. 1, Ch. 202, L. 1971; amd. Sec. 2, Ch. 204, L. 1971; amd. Sec. 90, Ch. 516, L. 1973; amd. Sec. 3, Ch. 514, L. 1975; amd. Sec. 5, Ch. 390, L. 1977; R.C.M. 1947, 84-1847; amd. Sec. 2, Ch. 576, L. 1979; amd. Sec. 2, Ch. 632, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 624, L. 1983; amd. Sec. 12, Ch. 649, L. 1983; amd. Sec. 1, Ch. 20, Sp. L. June 1986; amd. Sec. 1, Ch. 30, L. 1987; amd. Sec. 3, Ch. 8, L. 1989; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 3, Ch. 231, L. 1993; amd. Sec. 2, Ch. 605, L. 1993; amd. Secs. 2, 3, Ch. 642, L. 1993; amd. Sec. 1, Ch. 585, L. 1999; amd. Sec. 1, Ch. 8, Sp. L. May 2000; amd. Sec. 1, Ch. 404, L. 2001; amd. Sec. 3, Ch. 568, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 404 in (1)(a) increased aviation fuel tax from 3 to 4 cents per gallon; and made minor changes in style. Amendment effective July 1, 2001.

(Version effective on occurrence of contingency) Chapter 568 inserted (3) subjecting gasohol to 85% of the 27 cent gasoline tax; deleted former (3) that read: "(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1)"; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 12, Ch. 568, L. 2001, provided: "[This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with."

Contingent Termination: Section 13, Ch. 568, L. 2001, provided: "[This act] terminates June 30 of the fourth year following [the effective date of this act]." Effective on occurrence of contingency.

2000 Amendment: Chapter 8 in (1)(a) substituted "3 cents" for "2 cents" and inserted "other than fuel sold to the federal defense fuel supply center"; and made minor changes in style. Amendment effective May 18, 2000.

Cross-References

Refund authorized, 15-70-521.
Tax incentive for production of alcohol, 15-70-522.
Gasoline tax net proceeds pledged to payment of general obligation highway bonds, 17-5-507.
Allocation of portion of tax to fund highway system maintenance, 60-3-202.

15-70-205. Distributor's statement and payment — confidentiality. (1) Each distributor shall, not later than the 25th day of each calendar month, except as provided in 15-70-113(3), render a true signed statement to the department of all gasoline distributed and received by the distributor in this state during the preceding calendar month and containing any other information that the department may reasonably require in order to administer the gasoline license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an allowance for collecting the tax. An allowance may not be deducted from the 4-cent tax on aviation fuel.

(2) A distributor engaged in or carrying on a business at more than one place or location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. This section does not prohibit:

(a) the delivery to a distributor or the distributor's authorized representative of a certified copy of any return or report filed in connection with the tax;

(b) the inspection by the attorney general or other legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer or any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or must be in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction.

History: En. Sec. 5, Ch. 369, L. 1969; amd. Sec. 4, Ch. 204, L. 1971; amd. Sec. 91, Ch. 516, L. 1973; R.C.M. 1947, 84-1849; amd. Sec. 1, Ch. 565, L. 1987; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 1, Ch. 521, L. 1991; amd. Secs. 4, 5, Ch. 642, L. 1993; amd. Sec. 2, Ch. 158, L. 1995; amd. Sec. 5, Ch. 77, L. 1999; amd. Sec. 2, Ch. 585, L. 1999; amd. Sec. 2, Ch. 8, Sp. L. May 2000; amd. Sec. 2, Ch. 404, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 404 in (1) in last sentence near end after "deducted from the" substituted "4-cent tax" for "3-cent tax". Amendment effective July 1, 2001.

2000 Amendment: Chapter 8 near end of last sentence of (1) substituted "3-cent tax" for "2-cent tax". Amendment effective May 18, 2000.

15-70-206. Recordkeeping requirements. Each distributor or any other person dealing in, transporting, receiving, or storing gasoline shall keep for a period not to exceed 3 years such records, receipts, and invoices and any other pertinent papers and information as the department of transportation may require.

History: En. Sec. 7, Ch. 369, L. 1969; amd. Sec. 5, Ch. 204, L. 1971; amd. Sec. 93, Ch. 516, L. 1973; R.C.M. 1947, 84-1851; amd. Sec. 8, Ch. 512, L. 1991.

15-70-207. Invoice of distributors and aviation dealers. Each distributor and aviation dealer in this state shall at the time of delivery, except where authorized by the department of transportation, issue to the purchaser an invoice in which shall be stated the number of gallons of gasoline covered by such invoice and such other information as the department may require.

History: En. Sec. 9, Ch. 369, L. 1969; amd. Sec. 6, Ch. 204, L. 1971; amd. Sec. 95, Ch. 516, L. 1973; R.C.M. 1947, 84-1853; amd. Sec. 8, Ch. 512, L. 1991.

15-70-208. Examination of records. (1) The department of transportation or its authorized representative is hereby empowered to examine the books, papers, records, and equipment of any gasoline distributor or any person dealing in, transporting, or storing gasoline as defined in this part and to investigate the character of the disposition which any person makes of such gasoline in order to ascertain and determine whether all license taxes due hereunder are being properly reported and paid. If such books, papers, records, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer.

(2) The records, receipts, and invoices and any other pertinent papers supporting sales of every distributor or any person dealing in, transporting, or storing gasoline must be open and subject to inspection by the department or any of its employees or assistants during business hours in order to ascertain the amount of license tax due.

History: En. Secs. 6, 8, Ch. 369, L. 1969; amd. Secs. 92, 94, Ch. 516, L. 1973; R.C.M. 1947, 84-1850, 84-1852; amd. Sec. 30, Ch. 581, L. 1979; amd. Sec. 1, Ch. 16, L. 1983; amd. Sec. 8, Ch. 512, L. 1991.

15-70-209. Information reports — confidentiality. (1) A person receiving gasoline, including each exporter, importer, common carrier, private carrier, and contract carrier of property who hauls, receives, transports, or ships gasoline from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state, shall submit to the department of transportation, upon its request and within the time specified, a statement showing the number of gallons of gasoline contained in each shipment in interstate commerce and the movement of the products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee, and the date of delivery to the consignee.

(2) A person, except a licensed distributor or exporter, who refuses or fails to file a statement as required in this section is subject to a penalty of $100 for each failure or refusal. If a person establishes to the satisfaction of the department that the failure to file a statement as prescribed by the department was due to reasonable cause, the department shall waive the penalty.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. This section may not be construed to prohibit:

(a) the delivery to a person or the person's authorized representative of a certified copy of any report filed under subsection (1);

(b) the inspection by the attorney general or other legal representative of the state of the report or statement of a person if a person or distributor brings an action to set aside or review the tax based on the report or statement or if an action or proceeding has been instituted in accordance with the provisions of Title 15 against that person or distributor;

(c) the publication of statistics classified to prevent the identification of particular reports or statements and the items in the reports or statements;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax on motor fuels or the authorized representative of either officer of the report or statement of any person or the furnishing to the officer or authorized representative of an abstract of the report or statement, but permission may be granted or information may be furnished to the officer or a representative of the officer only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction.

History: En. Sec. 10, Ch. 369, L. 1969; amd. Sec. 96, Ch. 516, L. 1973; R.C.M. 1947, 84-1854; amd. Sec. 4, Ch. 8, L. 1989; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 2, Ch. 521, L. 1991; amd. Sec. 4, Ch. 231, L. 1993; amd. Sec. 2, Ch. 340, L. 1999.

15-70-210. Tax penalty for delinquency. (1) Any license tax not paid within the time provided in 15-70-113(3) and 15-70-205 is delinquent, a penalty of 10% must be added to the tax, and the tax bears interest at the rate of 1% a month, prorated daily, from the date of delinquency until paid. Upon a showing of good cause by the distributor, the department may waive any penalty.

(2) If a distributor or other person subject to the payment of the license tax willfully fails, neglects, or refuses to make any statement required by this part or willfully fails to make payment of the license tax within the time provided, the department may revoke any license issued under this part.

(3) The department shall set forth the information that it requires in the statement and determine the amount of the license tax due from the distributor and shall add a penalty of $100 or 10% of the amount due, whichever is greater, together with interest at the rate of 1% a month, prorated daily, from the date that the statements should have been made and the license tax should have been paid.

(4) The department shall proceed to collect the license tax, with penalties and interest. At the request of the department, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the license tax.

History: En. Sec. 14, Ch. 369, L. 1969; amd. Sec. 99, Ch. 516, L. 1973; R.C.M. 1947, 84-1858(part); amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 3, Ch. 340, L. 1999; amd. Sec. 1, Ch. 120, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 120 in (1) inserted reference to 15-70-113(3) and provided that interest be prorated daily; in (3) increased penalty from $25 to $100 and provided that interest be prorated daily; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 4, Ch. 120, L. 2001, provided: "[This act] applies to gasoline and special fuel tax liabilities occurring after June 30, 2001."

15-70-211. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department of transportation may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded thereafter. No action may be maintained to enjoin the collection of all or any part of the license tax.

History: En. Sec. 14, Ch. 369, L. 1969; amd. Sec. 99, Ch. 516, L. 1973; R.C.M. 1947, 84-1858(part); amd. Sec. 38, Ch. 439, L. 1981; amd. Sec. 8, Ch. 512, L. 1991.

15-70-212. Statute of limitations. Except in the case of a fraudulent return or of neglect or refusal to make a return, every deficiency shall be assessed within 3 years from the due date of the return or the date of filing the return, whichever period expires later.

History: En. Sec. 16, Ch. 369, L. 1969; R.C.M. 1947, 84-1860.

15-70-213 through 15-70-220 reserved.

15-70-221. Refund or credit authorized. (1) A person who purchases and uses any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol, for operating stationary gasoline engines used off the public highways and streets, or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the gasoline. The refund may not exceed the tax paid or to be paid to the state. Except as provided in subsection (5), a refund is not allowed for the tax per gallon upon aviation fuel allocated to the department of transportation by 67-1-301.

(2) A distributor who pays the gasoline license tax to this state erroneously is allowed a credit or refund of the amount of tax paid erroneously.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline with a tax liability of $200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor may not have declared the accounts of the purchaser worthless more than once during a 3-year period, and the distributor must have claimed those accounts as bad debts for federal or state income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(4) A person who purchases and exports for sale, use, or consumption outside Montana gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state the fuel is destined for. The credit or refund must be made upon completion of the information reports required under 15-70-209 and presentation to the department of proof of delivery outside Montana as it may by rule require.

(5) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 2 cents on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline license tax has been paid.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(1); amd. Sec. 2, Ch. 627, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 13, Ch. 649, L. 1983; amd. Sec. 5, Ch. 8, L. 1989; amd. Sec. 1, Ch. 562, L. 1989; amd. Sec. 5, Ch. 231, L. 1993; amd. Sec. 1, Ch. 428, L. 1993; amd. Secs. 6, 7, Ch. 642, L. 1993; amd. Sec. 4, Ch. 340, L. 1999; amd. Sec. 3, Ch. 585, L. 1999; amd. Sec. 3, Ch. 404, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 404 in (5) near middle after "may claim a refund of" increased amount of allowed refund on aviation fuel from 1 cent a gallon to 2 cents a gallon; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Refund authorized, 15-70-521.

Tax incentive for production of alcohol, 15-70-522.

Use of money credited to state park account for refunds, 60-3-201.

15-70-222. Required records. (1) Gasoline purchased and delivered into bulk storage for use in motor vehicles on public roads and for nonhighway use must be fully accounted for by detailed withdrawal records to accurately show the manner in which the gasoline was used. Gasoline on hand, determined by actual measurement, must be deducted from a claim and must be reported as an opening inventory on the next claim.

(2) Special storage facilities used for certain periods must be identified and explained. If special storage is used entirely for off-highway purposes and is not used in licensed vehicles, no records will be required other than purchase invoices showing the delivery into special storage.

(3) Service stations, bulk dealers, and marinas must prepare a separate and complete invoice for each withdrawal of gasoline for their own use upon which a refund is to be claimed.

(4) When no highway use of gasoline is deducted from the claim, the applicant shall substantiate purchases of gasoline and miles traveled for licensed motor vehicles upon request of the department of transportation.

(5) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim a refund of the state license tax on the gasoline used to operate the vehicle on roads or property in private ownership if the person has maintained the following records:

(a) the total number of miles traveled on and off public roads by each licensed vehicle;

(b) total gallons of gasoline used in each vehicle;

(c) purchase invoices supporting all gasoline handled through bulk storage, as well as all fuels purchased at service stations or received from other sources.

(6) An exporter or any other person who transports gasoline out of Montana for sale, use, or consumption outside of Montana shall maintain detailed and contemporaneous records of withdrawal, transportation, ownership, and delivery of the gasoline to destinations outside of Montana as required by the department of transportation.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(part); amd. Sec. 3, Ch. 627, L. 1979; amd. Sec. 6, Ch. 8, L. 1989; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 3, Ch. 158, L. 1995.

15-70-223. Estimate allowed for agricultural use — seller's signed statement acceptable on keylock or cardtrol purchases. (1) An applicant whose use qualifies as agricultural use may apply for a refund of the applicable tax on the gallons of gasoline as indicated by bulk delivery invoices or by evidence of keylock or cardtrol purchases as an estimate of off-roadway use. To ensure that the applicant's use qualifies as agricultural use, the department of transportation may request from the department of revenue information on the ratio of the applicant's gross earned farm income to total gross earned income, excluding unearned income, provided that the department of transportation gives notice to the applicant.

(2) For purposes of application for a refund under subsection (1), the department shall accept, as evidence of keylock or cardtrol purchases, a statement of the sale of gasoline with applicable tax that identifies the purchaser and that is signed by a licensed distributor.

(3) An applicant may apply for a refund of the applicable tax on gallons of gasoline as evidenced by bulk delivery invoices or by evidence of keylock or cardtrol purchases according to the applicant's ratio of gross earned farm income to total gross earned income, excluding unearned income, as follows:

(a) if the ratio is 50% or more, the applicant may apply for a refund of 60% of the gasoline tax;

(b) if the ratio is between 40% and 49%, the applicant may apply for a refund of 50% of the gasoline tax;

(c) if the ratio is between 30% and 39%, the applicant may apply for a refund of 40% of the gasoline tax;

(d) if the ratio is less than 30%, the applicant is not eligible for a refund of the gasoline tax under this section.

(4) If the applicant's ratio in any of the 3 previous years on record is higher than the present year, the highest ratio must be used to calculate the eligible refund.

(5) If an invoice or evidence is either lost or destroyed, the purchaser may support the purchaser's claim for refund by submitting an affidavit relating the circumstances of the loss or destruction and by producing other evidence that may be required by the department of transportation.

(6) An applicant whose use does not qualify as agricultural use may not estimate and shall maintain records as required by 15-70-222.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(part); amd. Sec. 4, Ch. 627, L. 1979; amd. Sec. 1, Ch. 356, L. 1989; amd. Sec. 1, Ch. 67, L. 1991; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 2, Ch. 245, L. 1993; amd. Sec. 2, Ch. 37, L. 1999; amd. Sec. 3, Ch. 461, L. 1999.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 127, L. 2001, repealed sec. 7, Ch. 461, L. 1999, which terminated the amendments to this section June 30, 2001. Effective March 26, 2001.

15-70-224. Determination of highway use. Highway use for each vehicle is determined by dividing the average miles per gallon rate into the number of miles traveled on public roads. When records are not available, an average of 4 miles per gallon or other methods that have been found acceptable may be used by the department to determine fuel use.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(part); amd. Sec. 5, Ch. 627, L. 1979; amd. Sec. 5, Ch. 340, L. 1999.

15-70-225. Application for refund or credit — filing — correction by department. (1) (a) Except as provided in subsection (1)(b), the application for refund is a signed statement, on a form furnished by the department of transportation. Except for a claim for a credit of taxes paid on unpaid accounts or a claim for a refund filed electronically, the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery, showing the total amount of gasoline purchased or aviation fuel purchased by a certified scheduled passenger air carrier, the total amount of gasoline or aviation fuel on which a refund is claimed, and the amount of the tax claimed for refund.

(b) A claim for a refund that is filed electronically in the manner specified by the department does not require a signature or the original invoices.

(c) A claim for a refund that is filed electronically does not relieve the taxpayer of maintaining the records upon which the claim for a refund is based.

(2) A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(3) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery under 15-70-201 is not valid for refund purposes.

(4) All applications for refunds must be filed with the department within 36 months after the date on which the gasoline or aviation fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

(5) If the department finds that the statement contains errors that are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(part); amd. Sec. 6, Ch. 627, L. 1979; amd. Sec. 2, Ch. 562, L. 1989; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 8, Ch. 642, L. 1993; amd. Sec. 6, Ch. 340, L. 1999; amd. Sec. 2, Ch. 110, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 110 at beginning of (1) inserted exception clause and near beginning of second sentence after "accounts" inserted "or a claim for a refund filed electronically"; inserted (1)(b) providing that a signature or original invoice is not required for claiming refund filed electronically; inserted (1)(c) providing that claim for refund filed electronically does not relieve taxpayer from maintaining refund records; and made minor changes in style. Amendment effective July 1, 2001.

15-70-226. Approval or rejection of claim. (1) The department has 120 working days after receiving the claim to approve or reject it. If approved, the department of transportation shall issue a credit in lieu of refund for the amount of the claim if the claimant is a distributor. For all other persons, a warrant must be drawn upon the state treasurer for the amount of the claim.

(2) If the department determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the department shall reject the claim in full. If a claim is rejected, the department may suspend claimant's right to refund for a period not to exceed 1 year.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(part); amd. Sec. 7, Ch. 627, L. 1979; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 4, Ch. 158, L. 1995.

15-70-227 through 15-70-230 reserved.

15-70-231. Unlawful use of aviation fuel. It is unlawful for any person to use aviation fuel or to sell aviation fuel for use in any motorized vehicle operated upon the public highways or streets of this state. Violation of this section is a misdemeanor subject to the penalties provided in 15-70-232.

History: En. 84-1855.1 by Sec. 8, Ch. 204, L. 1971; R.C.M. 1947, 84-1855.1; amd. Sec. 9, Ch. 642, L. 1993.

15-70-232. Penalties. Any distributor or other person who fails, neglects, or refuses to make and file the statements required by this part in the manner or within the time provided or who shall be delinquent in the payment of any license tax imposed by this part or who shall make any false statement with reference to his business or who shall make any false statement on any claim for refund or who violates any provision of the part shall, in addition to any other penalties imposed, be deemed guilty of a misdemeanor and upon conviction shall be fined in any amount not exceeding $1,000 or imprisoned in the county jail for not to exceed 6 months or shall be punished by the imposition of both such fine and imprisonment.

History: En. Sec. 15, Ch. 369, L. 1969; R.C.M. 1947, 84-1859.

Cross-References

Applicable to violations of provisions of local option motor fuels tax, 7-14-304.

15-70-233. Improperly imported fuel — seizure. (1) As used in this section, the following definitions apply:

(a) "conveyance" means a tank car, vehicle, or vessel that is used to transport fuel;

(b) "department" means the department of transportation; and

(c) "peace officer" means an employee of the department of transportation appointed as a peace officer under 61-12-201.

(2) Pursuant to 61-12-206(5), a peace officer may:

(a) stop and search a conveyance in the state if the peace officer has reasonable cause to believe that the conveyance is being used to carry improperly imported fuel and is intentionally avoiding fuel tax responsibilities; and

(b) seize without a warrant imported fuel for which the distributor or transporter has not obtained a valid Montana gasoline or special fuel distributor license as required in 15-70-202 and 15-70-341.

(3) The peace officer shall obtain authorization from the director of the department of transportation or the director's designee before seizing fuel.

(4) Upon seizing the fuel the peace officer believes to be improperly imported, the peace officer may:

(a) direct the rerouting or transfer of the fuel to a location designated by the department. The department shall reimburse the carrier for transportation costs from the point of seizure to the location designated by the department.

(b) unload the fuel; and

(c) take three samples of the fuel from the cargo tank for examination.

(5) Within 48 hours after seizure of the improperly imported fuel, the department shall issue a notice of right to file claim for the return of interest or title to the fuel. The notice must be issued to:

(a) the original owner of the fuel;

(b) the owner of the transportation company that conveyed the fuel; and

(c) any other interested party.

(6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest or title to the fuel within 30 days after the date of seizure. If a claim is filed for interest or title to the seized fuel, the department shall:

(a) provide the opportunity for a hearing;

(b) if requested, conduct the hearing within 5 days after receiving the claim;

(c) make a final determination of the party to take interest or title to the fuel within 2 working days after the hearing; and

(d) mail notice of the department's determination to interested parties.

(7) (a) The department may determine that the seized fuel be forfeited by the original owner and may:

(i) sell the fuel to the licensed Montana distributor predetermined through a bidding process established in department administrative rule; or

(ii) use the forfeited fuel for a public purpose determined by the department.

(b) The department shall issue a certificate of sale to the licensed distributor who purchases the seized fuel.

(c) The net proceeds from the sale of the fuel must be deposited in the general fund, less:

(i) the applicable taxes, fees, and penalties, which the department shall deposit in a highway revenue account in the state special revenue fund, as required in 15-70-101; and

(ii) the administrative costs incurred in conjunction with the seizure and disposal of the improperly imported fuel.

(8) If the department determines that the original owner of the fuel may reclaim interest or title to the fuel, the department may:

(a) return to the owner money, less tax and penalty, equal to the wholesale value of the fuel on the day of the seizure; or

(b) return the fuel.

(9) A person forfeits the interest, right, and title to improperly imported fuel if the person:

(a) fails to file a claim for the seized fuel within the time allowed in subsection (5); or

(b) is determined to be guilty of violating fuel tax laws.

(10) A person whose fuel is seized under this section is not relieved of any penalties imposed for illegal fuel importation in Title 15, chapter 70.

History: En. Sec. 6, Ch. 236, L. 1997.

15-70-234. Cooperative agreement — motor fuels taxes. In order to prevent the possibility of dual taxation of motor fuels purchased by Montana citizens and businesses on Indian reservations, the department and an Indian tribe may enter into a cooperative agreement. The department may, with the concurrence of the attorney general, include as a member of the negotiating team a representative of the department of justice who has expertise in Indian matters. The department of transportation shall report the status of cooperative agreement negotiations to the revenue and transportation interim committee. After negotiations are complete and if the legislature is not in session, the agreement must be presented to the committee for review and comment before the final agreement is submitted to the attorney general for approval pursuant to 18-11-105.

History: En. Sec. 1, Ch. 772, L. 1991; amd. Sec. 5, Ch. 772, L. 1991; amd. Sec. 5, Ch. 625, L. 1993; amd. Sec. 40, Ch. 19, L. 1999.

15-70-235. Tribal motor fuels administration account. (1) There is a special revenue account called the tribal motor fuels administration account.

(2) The administrative expenses and refund amounts deducted by the department of transportation under an agreement must be deposited in the tribal motor fuels administration account.

(3) The tribal motor fuels administration account may be expended by the department of transportation or by the department of justice only for the purposes of administering the motor fuels tax and providing refunds under an agreement.

History: En. Sec. 2, Ch. 772, L. 1991; amd. Sec. 5, Ch. 772, L. 1991; amd. Sec. 5, Ch. 158, L. 1995; amd. Sec. 84, Ch. 42, L. 1997.

15-70-236. Tribal motor fuels tax account. (1) There is a special revenue account called the tribal motor fuels tax account.

(2) The tax collected under 15-70-234, except the administrative expenses and refund amounts deducted under an agreement, must be deposited in the tribal motor fuels tax account.

(3) The money in the tribal motor fuels tax account must be disbursed to the tribe, as provided for in the agreement entered into pursuant to 15-70-234, on a quarterly basis.

History: En. Sec. 3, Ch. 772, L. 1991; amd. Sec. 85, Ch. 42, L. 1997.

15-70-237 through 15-70-240 reserved.

15-70-241. Terminated. Sec. 39(5), Ch. 15, Sp. L. July 1992.

History: En. Sec. 16, Ch. 15, Sp. L. July 1992.

15-70-242. Civil penalty. The department may, after giving notice and holding a hearing, if requested, pursuant to Title 2, chapter 4, part 6, impose a civil penalty not to exceed $100 for any violation of this part. The civil penalty may be in addition to the criminal penalties imposed under 15-70-232.

History: En. Sec. 1, Ch. 115, L. 2001.

Compiler's Comments

Effective Date: Section 6, Ch. 115, L. 2001, provided: "[This act] is effective July 1, 2001."

15-70-243 and 15-70-244 reserved.

15-70-245. *(Effective on occurrence of contingency)* **Tax label on ethanol pumps.** A fuel pump at a retail outlet that dispenses gasohol must have a decal designed and produced by the department. The department shall provide the decals, which must be affixed to both sides of the fuel pump and state that the price of the ethanol fuel reflects a 15% reduction in the amount of state taxes when compared to gasoline. The department may impose a civil penalty for failure to mark a pump that dispenses gasohol without the appropriate decal. The penalty for each violation is $100 for each fuel pump. The department shall give notice of a violation and, if requested, hold a hearing pursuant to Title 2, chapter 4, part 6, to determine whether a violation occurred. *(Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)*

History: En. Sec. 4, Ch. 568, L. 2001.

Compiler's Comments

Contingent Effective Date: Section 12, Ch. 568, L. 2001, provided: "[This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with."

Contingent Termination: Section 13, Ch. 568, L. 2001, provided: "[This act] terminates June 30 of the fourth year following [the effective date of this act]." Effective on occurrence of contingency.

Part 3

Special Fuels Use Tax

15-70-301. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm or income reports for tax purposes as required by the United States internal revenue service.

(2) "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

(4) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(5) "Department" means the department of transportation.

(6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

(7) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter.

(8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

(12) "Improperly imported fuel" means special fuel that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

(14) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

(15) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes all other types of additives when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

(17) "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

(18) (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.

(19) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state.

15-70-301. *(Effective on occurrence of contingency)* **Definitions.** As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm or income reports for tax purposes as required by the United States internal revenue service.

(2) "Biodiesel" means:

(a) (i) a fuel sold for use in motor vehicles operating upon the public roads and highways within the state that contains at least 20% esterified vegetable oil, at least 10% alcohol, or an equivalent mixture of both oil and alcohol, with the balance being diesel fuel or any other petroleum-based volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test and other additives; or

(ii) a monoalkyl ester that:

(A) is derived from domestically produced vegetable oils, renewable lipids, rendered animal fats, or any combination of those ingredients; and

(B) meets the requirements of ASTM PS 121, also known as the Provisional Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society of testing and materials.

(b) Biodiesel is also known as "B-20".

(3) "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(4) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

(5) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(6) "Department" means the department of transportation.

(7) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

(8) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter.

(9) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(10) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(11) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

(12) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

(13) "Improperly imported fuel" means special fuel that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(14) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

(15) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

(16) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

(17) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes biodiesel and additives of all types when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

(18) "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

(19) (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.

(20) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state. *(Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)*

15-70-301. *(Effective July 1 of fourth year following date of occurrence of contingency)* **Definitions.** As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

(4) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(5) "Department" means the department of transportation.

(6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

(7) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter.

(8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

(12) "Improperly imported fuel" means special fuel that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

(14) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

(15) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes all other types of additives when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

(17) "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

(18) (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.

(19) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state.

History: En. Sec. 2, Ch. 162, L. 1955; amd. Sec. 3, Ch. 247, L. 1959; amd. Sec. 1, Ch. 66, L. 1963; amd. Sec. 7, Ch. 70, L. 1963; amd. Sec. 12-106, Ch. 197, L. 1965; amd. Sec. 79, Ch. 516, L. 1973; amd. Sec. 1, Ch. 473, L. 1975; R.C.M. 1947, 84-1831; amd. Sec. 1, Ch. 350, L. 1979; amd. Sec. 2, Ch. 609, L. 1979; amd. Sec. 1, Ch. 321, L. 1985; amd. Sec. 1, Ch. 220, L. 1987; amd. Sec. 1, Ch. 547, L. 1989; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 1, Ch. 525, L. 1993; amd. Sec. 2, Ch. 10, Sp. L. November 1993; amd. Sec. 1, Ch. 43, L. 1995; amd. Sec. 4, Ch. 236, L. 1997; amd. Sec. 4, Ch. 461, L. 1999; amd. Sec. 28, Ch. 125, L. 2001; amd. Sec. 5, Ch. 568, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 125 in definition of public roads and highways of this state in (c) inserted references to Title 60, chapter 4, and Title 70, chapter 30; and made minor changes in style. Amendment effective October 1, 2001.

(Version effective on occurrence of contingency) Chapter 568 inserted definition of biodiesel; in definition of special fuel near beginning of second sentence after "fuel includes" substituted "biodiesel and additives of all types" for "all other types of additives"; and made minor changes in style. Amendment effective on occurrence of contingency.

Termination Provision Repealed: Section 1, Ch. 127, L. 2001, repealed sec. 7, Ch. 461, L. 1999, which terminated the amendments to this section June 30, 2001. Effective March 26, 2001.

Contingent Effective Date: Section 12, Ch. 568, L. 2001, provided: "[This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with."

Contingent Termination: Section 13, Ch. 568, L. 2001, provided: "[This act] terminates June 30 of the fourth year following [the effective date of this act]." Effective on occurrence of contingency.

Cross-References

Special fuels excluded from definition of gasoline, 15-70-201.

Definition of school district, 20-15-403.

15-70-302. Special fuel user's permits required — exceptions. (1) (a) A special fuel user shall obtain a special fuel user's permit annually from the department, prior to the use of special fuel:

(i) for the operation of a motor vehicle or vehicles in this state in excess of 26,000 pounds gross vehicle weight or registered gross vehicle weight used in an interstate operation;

(ii) by a special fuel user awarded a contract in accordance with 15-70-321; or

(iii) in a vehicle permitted pursuant to an agreement adopted pursuant to 15-70-121.

(b) Except as provided in subsection (3), a special fuel user shall at all times display the original or a reproduced copy of the permit in each special fuel vehicle operated by the special fuel user upon the public roads and highways. The permit or copy must be exhibited for inspection on request of any motor carrier services division employee, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user is responsible for reproducing clear and legible copies of the permit.

(2) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit is not transferable and is valid for 90 days. Permits must be issued at no cost to the user by the department, scale house personnel, and gross vehicle weight patrol crews. The department may require a user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(3) A special fuel user need not display the original or reproduced copy of the special fuel user's permit, as required by subsection (1), if the special fuel user is registered and licensed pursuant to the International Fuel Tax Agreement, as authorized by 15-70-121, and the vehicle displays a license or decal issued pursuant to the agreement.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(a); amd. Sec. 1, Ch. 599, L. 1979; amd. Sec. 1, Ch. 222, L. 1985; amd. Sec. 4, Ch. 111, L. 1989; amd. Sec. 2, Ch. 547, L. 1989; amd. Sec. 1, Ch. 157, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 2, Ch. 525, L. 1993; amd. Sec. 3, Ch. 10, Sp. L. November 1993; amd. Sec. 2, Ch. 43, L. 1995.

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-70-303. Application for permit. (1) Application for a special fuel user's permit must be made to the department unless otherwise provided in this part.

(2) The application must be filed upon a form prepared and furnished by the department. The application must contain information the department considers necessary.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(b), (c); amd. Sec. 2, Ch. 599, L. 1979; amd. Sec. 3, Ch. 547, L. 1989; amd. Sec. 3, Ch. 525, L. 1993; amd. Sec. 4, Ch. 10, Sp. L. November 1993.

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-70-304. *(Temporary)* **Bonding, release of surety, and additional bond.** (1) Except as provided in this section, a special fuel user's permit may not be issued to a person or continued in force unless the person has furnished a bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this part and the payment of any taxes, interest, and penalties due and to become due under this part. The department shall waive the bond requirement of a special fuel user not subject to the provisions of subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required of a special fuel user must be equivalent to twice the special fuel user's estimated quarterly tax payments as provided in this part, determined as the department considers proper; however, the total amount of the bond or bonds may not be less than:

(a) $5,000 for a special fuel user awarded a contract in accordance with 15-70-321; and

(b) $500 for any other special fuel user who:

(i) requests a special fuel user's permit to be reissued after being canceled for cause; or

(ii) fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327.

(3) A surety on a bond furnished by a special fuel user, as provided in this section, must be released and discharged from any liability to the state accruing on the bond after the expiration of 30 days from the date when the surety has lodged with the department a written request to be released and discharged, but this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. The department shall, promptly upon receiving a release request, notify the special fuel user who furnished the bond, and unless the special fuel user, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as provided in 15-70-301(2), the department shall cancel the special fuel user's permit.

(4) The department may require a special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301(2) if, in its opinion, the security of the surety bond previously filed by the special fuel user or the market value of the properties deposited as security by the special fuel user becomes impaired or inadequate. Upon failure of the special fuel user to give a new additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the permit.

15-70-304. *(Effective on occurrence of contingency)* **Bonding, release of surety, and additional bond.** (1) Except as provided in this section, a special fuel user's permit may not be issued to a person or continued in force unless the person has furnished a bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this part and the payment of any taxes, interest, and penalties due and to become due under this part. The department shall waive the bond requirement of a special fuel user not subject to the provisions of subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required of a special fuel user must be equivalent to twice the special fuel user's estimated quarterly tax payments as provided in this part, determined as the department considers proper; however, the total amount of the bond or bonds may not be less than:

(a) $5,000 for a special fuel user awarded a contract in accordance with 15-70-321; and

(b) $500 for any other special fuel user who:

(i) requests a special fuel user's permit to be reissued after being canceled for cause; or

(ii) fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327.

(3) A surety on a bond furnished by a special fuel user, as provided in this section, must be released and discharged from any liability to the state accruing on the bond after the expiration of 30 days from the date when the surety has lodged with the department a written request to be released and discharged, but this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. The department shall, promptly upon receiving a release request, notify the special fuel user who furnished the bond, and unless the special fuel user, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as provided in 15-70-301(3), the department shall cancel the special fuel user's permit.

(4) The department may require a special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301(3) if, in its opinion, the security of the surety bond previously filed by the special fuel user or the market value of the properties deposited as security by the special fuel user becomes impaired or inadequate. Upon failure of the special fuel user to give a new additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the permit. *(Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)*

15-70-304. *(Effective July 1 of fourth year following date of occurrence of contingency)* **Bonding, release of surety, and additional bond.** (1) Except as provided in this section, a special fuel user's permit may not be issued to a person or continued in force unless the person has furnished a bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this part and the payment of any taxes, interest, and penalties due and to become due under this part. The department shall waive the bond requirement of a special fuel user not subject to the provisions of subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required of a special fuel user must be equivalent to twice the special fuel user's estimated quarterly tax payments as provided in this part, determined as the department considers proper; however, the total amount of the bond or bonds may not be less than:

(a) $5,000 for a special fuel user awarded a contract in accordance with 15-70-321; and

(b) $500 for any other special fuel user who:

(i) requests a special fuel user's permit to be reissued after being canceled for cause; or

(ii) fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327.

(3) A surety on a bond furnished by a special fuel user, as provided in this section, must be released and discharged from any liability to the state accruing on the bond after the expiration of 30 days from the date when the surety has lodged with the department a written request to be released and discharged, but this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. The department shall, promptly upon receiving a release request, notify the special fuel user who furnished the bond, and unless the special fuel user, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as provided in 15-70-301(2), the department shall cancel the special fuel user's permit.

(4) The department may require a special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301(2) if, in its opinion, the security of the surety bond previously filed by the special fuel user or the market value of the properties deposited as security by the special fuel user becomes impaired or inadequate. Upon failure of the special fuel user to give a new additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the permit.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(d), (i), (j); amd. Sec. 3, Ch. 599, L. 1979; amd. Sec. 1, Ch. 625, L. 1979; amd. Sec. 1, Ch. 262, L. 1987; amd. Sec. 4, Ch. 547, L. 1989; amd. Sec. 1, Ch. 121, L. 1991; amd. Sec. 4, Ch. 525, L. 1993; amd. Sec. 5, Ch. 10, Sp. L. November 1993; amd. Sec. 6, Ch. 568, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 568 in (3) near end of second sentence and in (4) near middle of first sentence substituted reference to 15-70-301(3) for reference to 15-70-301(2). Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 12, Ch. 568, L. 2001, provided: "[This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with."

Contingent Termination: Section 13, Ch. 568, L. 2001, provided: "[This act] terminates June 30 of the fourth year following [the effective date of this act]." Effective on occurrence of contingency.

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-70-305. Issuance of permit — grounds for refusal — hearing. (1) Except as provided in subsection (3), upon receipt of the application and bond in proper form, the department shall issue to the applicant a permit to operate as a special fuel user. Each special fuel user's permit is valid until suspended or revoked for cause or otherwise canceled.

(2) If the special fuel user's permit is surrendered or revoked, the special fuel user shall pay a reissuance fee of $100.

(3) The department may refuse to issue a special fuel user's permit to any person:

(a) who formerly held a permit that, prior to the time of filing application, has been revoked for cause;

(b) who is not the real party in interest and the permit of the real party in interest has been revoked for cause prior to the time of filing the application; or

(c) upon other sufficient cause being shown.

(4) Before refusal to issue a permit, the department shall grant the applicant a hearing and shall grant the applicant at least 10 days' written notice of the time and place of hearing.

(5) A special fuel user's permit is not transferable.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(e) thru (g); amd. Sec. 4, Ch. 599, L. 1979; amd. Sec. 5, Ch. 547, L. 1989; amd. Sec. 5, Ch. 525, L. 1993; amd. Sec. 6, Ch. 10, Sp. L. November 1993.

Cross-References
Enforcement by Department of Transportation personnel, 61-12-206.

15-70-306. Revocation, suspension, and cancellation. (1) The department may revoke the permit of any special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking a permit, the department shall notify the permittee of its intention, by certified mail addressed to the permittee's last-known address shown in the files of the department, requiring the permittee to appear before the department on a day and hour specified in the notice, not more than 30 days or less than 10 days from date of notice, and show cause, if any, why the permit should not be revoked. However, at any time prior to and pending the hearing, the department may in the exercise of reasonable discretion suspend the permit.

(2) Upon revocation of a permit by the department, the holder shall immediately surrender the permit to the department for cancellation.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(part (h)); amd. Sec. 5, Ch. 599, L. 1979; amd. Sec. 6, Ch. 547, L. 1989; amd. Sec. 6, Ch. 525, L. 1993; amd. Sec. 7, Ch. 10, Sp. L. November 1993.

Cross-References
Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.
Contested case procedure, Title 2, ch. 4, part 6.
Enforcement by Department of Transportation personnel, 61-12-206.

15-70-307. Surrender of permit upon use discontinuance. The department shall cancel any special fuel user permit immediately upon surrender by the holder.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(part (h)); amd. Sec. 6, Ch. 599, L. 1979; amd. Sec. 7, Ch. 525, L. 1993.

Cross-References
Enforcement by Department of Transportation personnel, 61-12-206.

15-70-308. Repealed. Sec. 13, Ch. 232, L. 1997.

History: En. Sec. 1, Ch. 78, L. 1981; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 3, Ch. 43, L. 1995.

15-70-309. Repealed. Sec. 20, Ch. 10, Sp. L. November 1993.

History: En. Sec. 7, Ch. 547, L. 1989; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 8, Ch. 525, L. 1993.

15-70-310 reserved.

15-70-311. Special fuel user's temporary trip permits — nonresident agricultural harvesting equipment special fuel permit. (1) Any person operating a special fuel-powered vehicle over 26,000 pounds gross vehicle weight or registered gross vehicle weight upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by 15-70-302, is required to purchase a special fuel user's temporary trip permit. The permits must be issued by motor carrier services division employees, Montana highway patrol officers, and other enforcing agents that the department may prescribe by order or rule.

(2) Any nonresident upon entering the state with agricultural harvesting equipment that is over 26,000 pounds gross vehicle weight or registered gross vehicle weight and that is powered by special fuel and operating upon the public roads and highways of this state who fails or neglects to carry in or on equipment a valid special fuel vehicle permit, as provided by 15-70-302, is required to purchase a nonresident agricultural harvesting equipment special fuel permit. The permit must be issued by motor carrier services division employees, Montana highway patrol officers, and other enforcing agents that the department may prescribe by order or rule.

History: En. Sec. 1, Ch. 200, L. 1961; amd. Sec. 1, Ch. 105, L. 1967; amd. Sec. 87, Ch. 516, L. 1973; amd. Sec. 1, Ch. 440, L. 1975; R.C.M. 1947, 84-1842; amd. Sec. 2, Ch. 222, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 9, Ch. 525, L. 1993; amd. Sec. 3, Ch. 575, L. 1993; amd. Sec. 8, Ch. 10, Sp. L. November 1993.

Cross-References
Enforcement by Department of Transportation personnel, 61-12-206.

15-70-312. Fees for temporary permits — duration of temporary permits. (1) Temporary special fuel permits cost $30. The permit is valid for a period of time not to exceed 72 hours and is automatically void if the vehicle leaves the state of Montana during the 72-hour period.

(2) A temporary special fuel permit for a nonresident operating agricultural harvesting equipment costs $30 per unit for the calendar year in which the fee is collected. The permit is not transferable. A unit is defined as:

(a) one truck suitable for hauling commodities;

(b) one harvesting machine; and

(c) pickup trucks and any other accessory vehicles.

(3) All fees collected must be remitted to the department or deposited directly in the state special revenue fund for the department.

History: En. Sec. 2, Ch. 200, L. 1961; amd. Sec. 88, Ch. 516, L. 1973; amd. Sec. 2, Ch. 440, L. 1975; R.C.M. 1947, 84-1843(part); amd. Sec. 1, Ch. 601, L. 1979; amd. Sec. 1, Ch. 40, L. 1981; amd. Sec. 3, Ch. 48, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 10, Ch. 525, L. 1993.

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-70-313. Department to furnish forms. Special fuel temporary permits, nonresident temporary permits, remittance forms, and any other necessary papers for the accounting and enforcement of 15-70-311 through 15-70-314 shall be furnished by the department.

History: En. Sec. 2, Ch. 200, L. 1961; amd. Sec. 88, Ch. 516, L. 1973; amd. Sec. 2, Ch. 440, L. 1975; R.C.M. 1947, 84-1843(part).

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-70-314. Penalty for operation without temporary permit — compliance bond — policy continued. (1) Any unlicensed user of special fuel vehicles operating within the state of Montana without making application for said temporary permit and paying the specified fee shall be guilty of committing a misdemeanor and upon conviction be fined $50.

(2) Nothing contained herein shall affect the existing policy of accepting a compliance bond to be retained for use by the department and to be imposed at the discretion of the enforcing agency.

History: En. Sec. 3, Ch. 200, L. 1961; amd. Sec. 89, Ch. 516, L. 1973; R.C.M. 1947, 84-1844.

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-70-315. Repealed. Sec. 20, Ch. 10, Sp. L. November 1993.

History: En. Sec. 2, Ch. 220, L. 1987; amd. Sec. 11, Ch. 525, L. 1993.

15-70-316. Repealed. Sec. 44, Ch. 525, L. 1993.

History: En. Sec. 3, Ch. 220, L. 1987.

15-70-317 through 15-70-320 reserved.

15-70-321. *(Temporary)* **Tax on special fuel and volatile liquids.** (1) The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2):

(a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public roads and highways of this state;

(b) for each gallon of special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions; and

(c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

(2) The tax imposed in subsection (1) is 27 ¾ cents per gallon.

15-70-321. *(Effective on occurrence of contingency)* **Tax on special fuel and volatile liquids.** (1) The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2):

(a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas and biodiesel, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public roads and highways of this state;

(b) for each gallon of special fuel or other volatile liquid, except liquid petroleum gas and biodiesel, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions;

(c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway vehicle, regardless of weight, operating upon the public roads and highways of this state; and

(d) for each gallon of biodiesel delivered into the fuel supply tank of a highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

(2) (a) The tax imposed in subsections (1)(a) through (1)(c) is 27 ¾ cents per gallon.

(b) The tax imposed in subsection (1)(d) is 85% of the amount provided for in subsection (2)(a). *(Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)*

15-70-321. *(Effective July 1 of fourth year following date of occurrence of contingency)* **Tax on special fuel and volatile liquids.** (1) The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2):

(a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public roads and highways of this state;

(b) for each gallon of special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions; and

(c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

(2) The tax imposed in subsection (1) is 27 ¾ cents per gallon.

History: En. 84-1832.1 by Sec. 2, Ch. 60, L. 1969; amd. Sec. 2, Ch. 277, L. 1971; amd. Sec. 81, Ch. 516, L. 1973; amd. Sec. 2, Ch. 473 L. 1975; amd. Sec. 1, Ch. 514, L. 1975; amd. Sec. 4, Ch. 390, L. 1977; R.C.M. 1947, 84-1832.1; amd. Sec. 3, Ch. 632, L. 1979; amd. Sec. 2, Ch. 624, L. 1983; amd. Sec. 2, Ch. 30, L. 1987; amd. Sec. 12, Ch. 525, L. 1993; amd. Sec. 23, Ch. 575, L. 1993; amd. Sec. 3, Ch. 605, L. 1993; amd. Sec. 9, Ch. 10, Sp. L. November 1993; amd. Sec. 4, Ch. 43, L. 1995; amd. Sec. 7, Ch. 568, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 568 in (1)(a) near middle after "petroleum gas" inserted "and biodiesel"; in (1)(b) near beginning after "petroleum gas" inserted "and biodiesel"; inserted (1)(d) establishing a tax on biodiesel; in (2)(a) after "imposed in" substituted "subsections (1)(a) through (1)(c)" for "subsection (1)"; inserted (2)(b) establishing the tax rate on biodiesel; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 12, Ch. 568, L. 2001, provided: "[This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with."

Contingent Termination: Section 13, Ch. 568, L. 2001, provided: "[This act] terminates June 30 of the fourth year following [the effective date of this act]." Effective on occurrence of contingency.

Cross-References

Allocation of portion of tax to fund highway system maintenance, 60-3-202.

15-70-322. Repealed. Sec. 44, Ch. 525, L. 1993.

History: En. Sec. 3, Ch. 162, L. 1955; amd. Sec. 2, Ch. 66, L. 1963; amd. Sec. 3, Ch. 60, L. 1969; amd. Sec. 1, Ch. 12, L. 1971; amd. Sec. 1, Ch. 277, L. 1971; amd. Sec. 80, Ch. 516, L. 1973; R.C.M. 1947, 84-1832; amd. Sec. 1, Ch. 610, L. 1979; amd. Sec. 2, Ch. 321, L. 1985.

15-70-323. Special fuel user's records. (1) Every special fuel user and every person importing, manufacturing, refining, dealing in, transporting, or storing special fuel in this state shall keep records, receipts, and invoices and other pertinent papers that the department may require and shall produce them for the inspection of the department at any time during the business hours of the day.

(2) The records, receipts, invoices, and other pertinent papers must be kept for a period of at least 3 years from the date on which the return to which they relate was required to have been made.

History: En. Sec. 5, Ch. 162, L. 1955; amd. Sec. 2, Ch. 216, L. 1957; amd. Sec. 82, Ch. 516, L. 1973; R.C.M. 1947, 84-1834; amd. Sec. 1, Ch. 58, L. 1985; amd. Sec. 13, Ch. 525, L. 1993.

15-70-324. Examination of records — enforcement of part. (1) The department shall enforce the provisions of this part.

(2) The department or its authorized representative may examine the books, papers, records, and equipment of any special fuel user or any person dealing in, transporting, or storing special fuel as defined in this part and may investigate the character of the disposition that any person makes of special fuel in order to ascertain and determine whether all excise taxes due are being properly reported and paid. If the books, papers, records, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer and must be, if requested by the department, accompanied by the special fuel user.

(3) For the purpose of enforcing the provisions of this part, the fact that a special fuel user has placed or received special fuel into storage or dispensing equipment designed to fuel motor vehicles is prima facie evidence that all of the special fuel has been delivered by the special fuel user into the fuel supply tanks of motor vehicles and consumed in the operation of motor vehicles upon the highways unless the contrary is established by satisfactory evidence.

(4) The department may establish vehicle inspection sites and may stop, detain, and inspect vehicles. A person who purposely or knowingly refuses to permit an inspection authorized by this section is guilty of a misdemeanor punishable by a fine not to exceed $500 upon conviction for the first offense, not to exceed $1,000 upon conviction for the second offense, and not to exceed $2,000 for each subsequent conviction. Each refusal is a separate offense.

(5) The department shall, upon request from officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, or the provinces of Canada, forward to the officials any information that it may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any special fuel user, provided the other state or states furnish like information to this state.

History: En. Sec. 9, Ch. 162, L. 1955; amd. Sec. 1, Ch. 106, L. 1967; amd. Sec. 85, Ch. 516, L. 1973; amd. Sec. 2, Ch. 34, L. 1977; R.C.M. 1947, 84-1838(part); amd. Sec. 2, Ch. 16, L. 1983; amd. Sec. 14, Ch. 525, L. 1993; amd. Sec. 10, Ch. 10, Sp. L. November 1993.

15-70-325. Returns. (1) For the purpose of determining the amount of liability for special fuel tax, each special fuel user shall file with the department, on forms prescribed by the department, a quarterly tax return.

(2) Upon annual application, the department shall waive the filing of a quarterly tax return of any special fuel user who establishes that the user's annual tax liability is or will be $200 or less.

(3) The user shall make an annual report and return to the department on forms prescribed by the department, on or before January 31 of each year. If the department determines that a user filing annual returns is delinquent in making reports and payments, it shall require the person to file quarterly returns. A return, annual or quarterly, must contain a declaration by the person making the return to the effect that the statements contained in the return are true and are made under penalties of perjury. The declarations have the same force and effect as a verification. The return must show the information that the department may reasonably require for the proper administration and enforcement of this part.

(4) The special fuel user shall file the return on or before the last day of the next calendar month following the period to which it relates; provided, however, that for good cause the department may grant a taxpayer a reasonable extension of time for filing, but not to exceed 30 days.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(part (a)); amd. Sec. 1, Ch. 299, L. 1979; amd. Sec. 7, Ch. 599, L. 1979; amd. Sec. 1, Ch. 200, L. 1985; amd. Sec. 15, Ch. 525, L. 1993.

15-70-326. *(Temporary)* **Computation.** The tax imposed by this part must be computed, with respect to special fuel for which the tax has not been paid in this state and that has been consumed by the purchaser as a special fuel user, by multiplying the tax rate per gallon provided in this part by the number of gallons of special fuel consumed by the special fuel user in the operation of motor vehicles on the highways of this state.

15-70-326. *(Effective on occurrence of contingency)* **Computation.** The tax imposed by this part must be computed, with respect to special fuel for which the tax has not been paid in this state and that has been consumed by the purchaser as a special fuel user, by multiplying the appropriate tax rate per gallon provided in this part by the number of gallons of the type of special fuel consumed by the special fuel user in the operation of motor vehicles on the highways of this state. *(Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)*

15-70-326. *(Effective July 1 of fourth year following date of occurrence of contingency)* **Computation.** The tax imposed by this part must be computed, with respect to special fuel for which the tax has not been paid in this state and that has been consumed by the purchaser as a special fuel user, by multiplying the tax rate per gallon provided in this part by the number of gallons of special fuel consumed by the special fuel user in the operation of motor vehicles on the highways of this state.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(b); amd. Sec. 16, Ch. 525, L. 1993; amd. Sec. 9, Ch. 568, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 568 near middle after "multiplying the" inserted "appropriate" and after "gallons of" inserted "the type of". Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 12, Ch. 568, L. 2001, provided: "[This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with."

Contingent Termination: Section 13, Ch. 568, L. 2001, provided: "[This act] terminates June 30 of the fourth year following [the effective date of this act]." Effective on occurrence of contingency.

15-70-327. Payment — deductions. The tax return must be accompanied by remittance covering the tax due under this part for the use, as defined in 15-70-301, of special fuels during the preceding period.

History: **En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(c); amd. Sec. 8, Ch. 599, L. 1979; amd. Sec. 17, Ch. 525, L. 1993.**

15-70-328. Credits. A licensed special fuel user who has paid a special fuel tax either directly or to the vendor from whom it was purchased must receive credit in the amount of:

(1) the tax paid on special fuel exported for use outside of this state or for any use off the public roads and highways of this state; or

(2) overpayment of special fuel taxes not due to the state.

History: **En. Sec. 7, Ch. 162, L. 1955; amd. Sec. 1, Ch. 104, L. 1967; R.C.M. 1947, 84-1836; amd. Sec. 3, Ch. 562, L. 1989; amd. Sec. 2, Ch. 428, L. 1993; amd. Sec. 18, Ch. 525, L. 1993.**

15-70-329. Procedures for credits — deadline. (1) If a licensed special fuel user wants to receive a refund of special fuel taxes or of the temporary permit fee, the user shall make a signed and written request to the department requesting those amounts then due. Any amount determined to be creditable by the department under 15-70-328 must first be credited on any amounts then due and payable from the special fuel user to whom the refund is due, and the department shall then certify the balance to the credit of the user. A warrant must be drawn upon the state treasurer for the amount of the claim, and the claim must be paid in the same manner as other claims against the state are paid.

(2) In case a special fuel user fails or neglects to file a request for refund of special fuel taxes within 12 months from the date the user's special fuel license became canceled, the department is under no obligation to make a refund.

(3) A request for refund or credit under this section must be made within 3 years from the date of the payment for which a refund or credit is claimed.

History: **En. Sec. 8, Ch. 162, L. 1955; amd. Sec. 2, Ch. 104, L. 1967; amd. Sec. 84, Ch. 516, L. 1973; R.C.M. 1947, 84-1837; amd. Sec. 1, Ch. 33, L. 1993; amd. Sec. 19, Ch. 525, L. 1993.**

15-70-330. Special fuel penalties. (1) In the case of a special fuel user who refuses or fails to file a return required by this part within the time prescribed by 15-70-103 and 15-70-325, there is imposed a penalty of $25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for each calendar month or fraction of a month during which the refusal or failure continues. However, if any special fuel user establishes to the satisfaction of the department that the failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this section.

(2) Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under this part, interest at the rate of 1% a month or fraction of a month from the date on which the tax was due to the date of payment in full must be added to the amount due and unpaid.

(3) (a) A special fuel user may not use dyed special fuel to operate a motor vehicle upon the public roads and highways of this state unless the fuel is subject to taxation under 15-70-321(1)(b) or the use is permitted pursuant to rules adopted under subsection (3)(b). The purposeful or knowing use of dyed special fuel in a motor vehicle operating upon the public roads and highways of this state in violation of this subsection is subject to the civil penalty imposed under 15-70-372 for the first offense. A subsequent offense is a misdemeanor punishable as provided in 15-70-336. Each use is a separate offense.

(b) The department shall adopt and enforce reasonable rules for the movement of off-highway vehicles traveling from one location to another on public highways, public roads, or streets when using dyed fuel or nontaxed fuel.

(4) The operator of the vehicle is liable for the tax imposed in 15-70-321. If the operator refuses or fails to pay the tax, in whole or in part, the seller of the special fuel is jointly and severally liable for the tax imposed under 15-70-321 and for the penalties described in this section if the seller knows or has reason to know that the fuel will be used for a taxable purpose.

History: **En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977;**

amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(d), (e); amd. Sec. 1, Ch. 591, L. 1979; amd. Sec. 20, Ch. 525, L. 1993; amd. Sec. 11, Ch. 10, Sp. L. November 1993; amd. Sec. 5, Ch. 43, L. 1995; amd. Sec. 3, Ch. 115, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 115 at end of second sentence in (3)(a) inserted language imposing civil penalty under 15-70-372 for first offense and in third sentence substituted language providing that subsequent offense is punishable as provided in 15-70-336 for "punishable by a fine not to exceed $500 upon conviction for the first offense, not to exceed $1,000 upon conviction for the second offense, and not to exceed $2,000 for each subsequent conviction"; and made minor changes in style. Amendment effective July 1, 2001.

15-70-331. Deficiency. If it be determined by the department that the tax reported by any special fuel user is deficient, it shall proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency interest at the rate of 1% per month or fraction of a month from the date the return was due.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(f); amd. Sec. 21, Ch. 525, L. 1993.

15-70-332. Determination if no return made. (1) If any special fuel user, whether or not the user is licensed as a special fuel user, fails, neglects, or refuses to file a special fuel tax return when due, the department shall on the basis of information available to it determine the tax liability of the special fuel user for the period during which a return was not filed, and to the tax as determined, the department shall add the penalty and interest provided in 15-70-330(1).

(2) An assessment made by the department pursuant to this section or to 15-70-331 is presumed to be correct, and in any case in which the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(g); amd. Sec. 22, Ch. 525, L. 1993.

15-70-333. Fraudulent return — penalty. If a special fuel user files a false or fraudulent return with intent to evade the tax imposed by this part:

(1) there must be added to the amount of deficiency determined by the department a penalty equal to 25% of the deficiency, together with interest at 1% per month or fraction of a month on the deficiency from the date the tax was due to the date of payment, in addition to all other penalties prescribed by law; and

(2) the person is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $2,000 or by imprisonment of not less than 30 days or more than 6 months, or by both fine and imprisonment.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(h); amd. Sec. 23, Ch. 525, L. 1993.

15-70-334. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed or recorded.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(k); amd. Sec. 39, Ch. 439, L. 1981.

15-70-335. Statute of limitation. Except in the case of a fraudulent return or of neglect or refusal to make a return, every deficiency shall be assessed under 15-70-331 within 3 years after the 25th day of the next succeeding calendar month following the monthly period for which the amount is proposed to be determined or within 3 years after the return is filed, whichever period expires later.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(i); amd. Sec. 2, Ch. 58, L. 1985.

15-70-336. Criminal penalties. (1) A person violating any provision of this part, except 15-70-311 through 15-70-314 and 15-70-321, is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $1,000 or by imprisonment for not less than 30 days or more than 6 months, or both.

(2) The fine and imprisonment provided for in this section is in addition to any other penalty imposed by any other provision of this part.

History: En. Sec. 10, Ch. 162, L. 1955; amd. Sec. 3, Ch. 216, L. 1957; R.C.M. 1947, 84-1839; amd. Sec. 4, Ch. 115, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 115 near beginning of (1) deleted reference to 15-70-101, after "misdemeanor" deleted "unless the act is by any other law of this state declared to be a felony", and decreased maximum fine from $2,000 to $1,000; and made minor changes in style. Amendment effective July 1, 2001.

15-70-337 through 15-70-340 reserved.

15-70-341. *(Temporary)* **License and security of special fuel distributors — denial or revocation of license — reissuance fee.** (1) (a) Each special fuel distributor, including an exporter and importer, as those terms are defined in 15-70-301, prior to the commencement of doing business, shall file:

(i) an application for a license with the department, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of special fuel taxes the distributor will pay to this state each month.

(ii) The minimum required security for a distributor who imports or exports special fuel, or both, is $25,000.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or revoked.

(2) The department may deny the issuance of a special fuel distributor license or revoke a special fuel distributor license if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the special fuel license tax.

(3) If an application for a special fuel distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

(4) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of $100.

(5) Failure to obtain a special fuel distributor license as required in this section subjects the distributor to the provisions of 15-70-357 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(6) As used in this section, "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(7) The owner of a commercial motor vehicle that is engaged in transporting special fuel for a distributor is not subject to the provisions of this section.

15-70-341. *(Effective on occurrence of contingency)* **License and security of special fuel distributors — denial or revocation of license — reissuance fee.** (1) (a) Each special fuel distributor, including an exporter and importer, as those terms are defined in 15-70-301, prior to the commencement of doing business, shall file:

(i) an application for a license with the department, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of special fuel taxes the distributor will pay to this state each month.

(ii) The minimum required security for a distributor who imports or exports special fuel, or both, is $25,000.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or revoked.

(2) The department may deny the issuance of a special fuel distributor license or revoke a special fuel distributor license if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the special fuel license tax.

(3) If an application for a special fuel distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

(4) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of $100.

(5) Failure to obtain a special fuel distributor license as required in this section subjects the distributor to the provisions of 15-70-357 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(6) As used in this section, "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(7) The owner of a commercial motor vehicle that is engaged in transporting special fuel for a distributor is not subject to the provisions of this section.

(8) A distributor who blends biodiesel must be licensed with the department. If the distributor cannot be licensed, the distributor is required to buy preblended biodiesel. *(Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)*

15-70-341. *(Effective July 1 of fourth year following date of occurrence of contingency)* **License and security of special fuel distributors — denial or revocation of license — reissuance fee.** (1) (a) Each special fuel distributor, including an exporter and importer, as those terms are defined in 15-70-301, prior to the commencement of doing business, shall file:

(i) an application for a license with the department, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of special fuel taxes the distributor will pay to this state each month.

(ii) The minimum required security for a distributor who imports or exports special fuel, or both, is $25,000.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or revoked.

(2) The department may deny the issuance of a special fuel distributor license or revoke a special fuel distributor license if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the special fuel license tax.

(3) If an application for a special fuel distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

(4) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of $100.

(5) Failure to obtain a special fuel distributor license as required in this section subjects the distributor to the provisions of 15-70-357 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(6) As used in this section, "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(7) The owner of a commercial motor vehicle that is engaged in transporting special fuel for a distributor is not subject to the provisions of this section.

History: En. Sec. 24, Ch. 525, L. 1993; amd. Sec. 12, Ch. 10, Sp. L. November 1993; amd. Sec. 5, Ch. 236, L. 1997; amd. Sec. 3, Ch. 37, L. 1999; amd. Sec. 2, Ch. 142, L. 2001; amd. Sec. 10, Ch. 568, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 142 in (1)(b)(i) at beginning inserted exception clause; inserted (1)(b)(ii) regarding minimum required security for distributor of special fuel; inserted (2) regarding denial or revocation of special fuel distributor license; inserted (3) regarding right to appeal denial or revocation of special fuel distributor license; inserted (7) providing exception for owner of commercial motor vehicle under certain conditions; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 568 inserted (8) requiring licensing of a distributor who blends biodiesel and requiring the distributor to buy preblended biodiesel if the distributor cannot be licensed. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 12, Ch. 568, L. 2001, provided: "[This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with."

Contingent Termination: Section 13, Ch. 568, L. 2001, provided: "[This act] terminates June 30 of the fourth year following [the effective date of this act]." Effective on occurrence of contingency.

15-70-342. Repealed. Sec. 5, Ch. 37, L. 1999.

History: En. Sec. 25, Ch. 525, L. 1993.

15-70-343. Special fuel license tax — rate. (1) Each distributor shall pay to the department of transportation a license tax for the privilege of engaging in and carrying on business in this state. The license tax is in the amount imposed under 15-70-321 for each gallon of special fuel that is distributed by the distributor within the state and upon which the special fuel license tax has not been paid by any other distributor.

(2) Special fuel may not be included in the measure of the distributor's license tax if it is:

(a) dyed by injector at a refinery or terminal for off-highway use; or

(b) sold for export, unless the distributor is not licensed and is not paying the tax to the state where the fuel is destined.

History: En. Sec. 26, Ch. 525, L. 1993; amd. Sec. 13, Ch. 10, Sp. L. November 1993; amd. Sec. 7, Ch. 340, L. 1999.

15-70-344. Distributor's statement and payment — confidentiality. (1) Each distributor shall, not later than the 25th day of each calendar month, except as provided in 15-70-113(3), render to the department of transportation a signed statement that specifies all special fuel distributed and received by the distributor in this state during the preceding calendar month and that contains other information the department may reasonably require in order to administer the special fuel license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-343, less any refund credit issued under 15-70-356 and less 1% of the total tax that may be deducted by the distributor as an allowance for collection.

(2) A distributor engaged in or carrying on a business at more than one location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of special fuel. This section does not prohibit:

(a) the delivery to a distributor or a distributor's authorized representative of a certified copy of any return or report filed in connection with the distributor's tax;

(b) the inspection by the attorney general or by another legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or by the proper officer of any state imposing a tax on special fuel or by any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction.

History: En. Sec. 27, Ch. 525, L. 1993; amd. Sec. 6, Ch. 77, L. 1999.

15-70-345. Recordkeeping requirements. Each distributor or any other person dealing in, transporting, receiving, or storing special fuel shall keep for a period not to exceed 3 years the records, receipts, and invoices and any other pertinent papers and information that the department of transportation may require.

History: En. Sec. 28, Ch. 525, L. 1993.

15-70-346. Terminated. Sec. 39(5), Ch. 15, Sp. L. July 1992.

History: En. Sec. 17, Ch. 15, Sp. L. July 1992.

15-70-347. Terminated. Sec. 39(4), Ch. 15, Sp. L. July 1992.

History: En. Sec. 18, Ch. 15, Sp. L. July 1992.

15-70-348. Invoice of distributors. Each distributor in this state shall at the time of delivery, except when authorized by the department of transportation, issue to the purchaser an invoice that states the number of gallons of special fuel covered by the invoice and other information the department may require.

History: En. Sec. 29, Ch. 525, L. 1993.

15-70-349. Examination of records. (1) The department or its authorized representative may examine the books, papers, records, and equipment of any special fuel distributor or any person dealing in, transporting, or storing special fuel, as defined in this part, and may investigate the character of the disposition that any person makes of the special fuel in order to ascertain and determine whether all license taxes due are being properly reported and paid. If the books, papers, records, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer.

(2) The records, receipts, and invoices and any other pertinent papers supporting sales of each distributor or any person dealing in, transporting, or storing special fuel must be open and subject to inspection by the department or its authorized representative during business hours in order to ascertain the amount of license tax due.

(3) The department may physically inspect terminals, dyes, dyeing equipment, storage facilities, and downstream storage facilities. A person who purposely or knowingly refuses to permit an inspection authorized by this section is guilty of a misdemeanor punishable by a fine not to exceed $500 upon conviction for the first offense, not to exceed $1,000 upon conviction for the second offense, and not to exceed $2,000 for each subsequent conviction. Each refusal is a separate offense.

History: En. Sec. 30, Ch. 525, L. 1993; amd. Sec. 14, Ch. 10, Sp. L. November 1993.

15-70-350 reserved.

15-70-351. Information reports — penalty — confidentiality. (1) A person receiving special fuel, including an importer, exporter, common carrier, private carrier, and contract carrier of property who hauls, receives, transports, or ships special fuel from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state shall submit to the department of transportation, upon its request and within the time specified, a statement showing the number of gallons of special fuel contained in each shipment in interstate commerce and the movement of the products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee, and the date of delivery to the consignee.

(2) A person, except a licensed distributor, importer, or exporter, who refuses or fails to file a statement as required in this section is subject to a penalty of $100 for each failure or refusal.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of special fuel. This section may not be construed to prohibit:

(a) the delivery to a person or the person's authorized representative of a certified copy of any report filed under subsection (1);

(b) the inspection by the attorney general or other legal representative of the state of the report or statement of a person if a person or distributor brings an action to set aside or review the tax based on the report or statement or if an action or proceeding has been instituted in accordance with the provisions of Title 15 against that person or distributor;

(c) the publication of statistics classified to prevent the identification of particular reports or statements and the items in the reports or statements;

(d) the inspection by the commissioner of internal revenue of the United States or by the proper officer of any state imposing a tax on special fuel or by the authorized representative of either officer of the report or statement of any person or the furnishing to the officer or authorized representative of an abstract of the report or statement, but permission may be granted or information may be furnished to the officer or the officer's representative only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction.

History: En. Sec. 31, Ch. 525, L. 1993.

15-70-352. Penalties for delinquency. (1) Any license tax not paid within the time provided in 15-70-113(3) and 15-70-344 is delinquent, a penalty of 10% is added to the tax, and the tax bears interest at the rate of 1%, prorated daily, on the tax due for each calendar month. Upon a showing of good cause by the distributor, the department may waive the penalty.

(2) If a distributor or other person subject to the payment of the license tax willfully fails, neglects, or refuses to make any statement required by this part or willfully fails to make payment of the license tax within the time provided, the department may revoke any license issued under this part.

(3) The department shall set forth the information it requires in the statement and determine the amount of the license tax due from the distributor and shall add a penalty of $100 or 10% of the amount due, whichever is greater, together with an interest rate of 1% a month, prorated daily, from the date the statements should have been made and the license tax should have been paid.

(4) The department shall proceed to collect the license tax, with penalties and interest. At the request of the department, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the license tax.

History: En. Sec. 32, Ch. 525, L. 1993; amd. Sec. 7, Ch. 77, L. 1999; amd. Sec. 2, Ch. 120, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 120 in (1) and (3) substituted daily proration of interest for interest determined on a fraction of a month; in (3) increased penalty from $25 to $100; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 4, Ch. 120, L. 2001, provided: "[This act] applies to gasoline and special fuel tax liabilities occurring after June 30, 2001."

15-70-353. Fraudulent returns — penalty. If a special fuel distributor files a false or fraudulent return with intent to evade the tax imposed by this part, there is added to the amount of deficiency determined by the department of transportation a penalty equal to 25% of the deficiency, together with interest at 1% per month or fraction of a month on the deficiency from the date the tax was due to the date of payment, in addition to all other penalties prescribed by law.

History: En. Sec. 33, Ch. 525, L. 1993.

15-70-354. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department of transportation may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded thereafter. An action may not be maintained to enjoin the collection of all or any part of the license tax.

History: En. Sec. 34, Ch. 525, L. 1993.

15-70-355. Statute of limitations. Except in the case of a fraudulent return or of neglect or refusal to make a return, every deficiency must be assessed within 3 years from the due date of the return or the date of filing the return, whichever period expires later.

History: En. Sec. 35, Ch. 525, L. 1993.

15-70-356. Refund or credit authorized. (1) A person who purchases and uses any special fuel on which the Montana special fuel license tax has been paid for operating stationary special fuel engines used off the public highways and streets or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the special fuel used. The refund may not exceed the tax paid or to be paid to the state.

(2) (a) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is entitled to a refund of the taxes paid on special fuel regardless of the use of the special fuel.

(b) (i) A nonpublic school may use dyed special fuel in buses that are owned by the nonpublic school if the buses are used for the transportation of pupils solely for nonsectarian school-related purposes.

(ii) For the purposes of this subsection (2)(b), nonpublic schools are those schools that have been accredited pursuant to 20-7-102.

(3) A distributor who pays the special fuel license tax to this state erroneously is allowed a credit or refund of the amount of tax paid.

(4) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of special fuel with a tax liability of $200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor shall have declared the accounts of the purchaser worthless not more than once during a 3-year period and claimed those accounts as bad debts for federal or state income tax purposes.

(b) If a credit has been granted under subsection (4)(a), any amount collected on the accounts declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(5) A person who purchases and exports for sale, use, or consumption outside Montana any special fuel on which the Montana special fuel tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state where fuel is destined. Upon completion of the reports required under 15-70-351, the department shall authorize the credit or refund.

History: En. Sec. 36, Ch. 525, L. 1993; amd. Sec. 15, Ch. 10, Sp. L. November 1993; amd. Sec. 1, Ch. 569, L. 1995; amd. Sec. 8, Ch. 340, L. 1999.

15-70-357. Improperly imported fuel — seizure. (1) As used in this section, the following definitions apply:

(a) "conveyance" means a tank car, vehicle, or vessel that is used to transport fuel;

(b) "department" means the department of transportation; and

(c) "peace officer" means an employee of the department of transportation appointed as a peace officer under 61-12-201.

(2) Pursuant to 61-12-206(5), a peace officer may:

(a) stop and search a conveyance in the state if the peace officer has reasonable cause to believe that the conveyance is being used to carry improperly imported fuel and is intentionally avoiding fuel tax responsibilities; and

(b) seize without a warrant imported fuel for which the distributor or transporter has not obtained a valid Montana gasoline or special fuel distributor license as required in 15-70-202 and 15-70-341.

(3) The peace officer shall obtain authorization from the director of the department of transportation or the director's designee before seizing fuel.

(4) Upon seizing the fuel the peace officer believes to be improperly imported, the peace officer may:

(a) direct the rerouting or transfer of the fuel to a location designated by the department. The department shall reimburse the carrier for transportation costs from the point of seizure to the location designated by the department.

(b) unload the fuel; and

(c) take three samples of the fuel from the cargo tank for examination.

(5) Within 48 hours after seizure of the improperly imported fuel, the department shall issue a notice of right to file claim for the return of interest or title to the fuel. The notice must be issued to:

(a) the original owner of the fuel;

(b) the owner of the transportation company that conveyed the fuel; and

(c) any other interested party.

(6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest or title to the fuel within 30 days after the date of seizure. If a claim is filed for interest or title to the seized fuel, the department shall:

(a) provide the opportunity for a hearing;

(b) if requested, conduct the hearing within 5 days after receiving the claim;

(c) make a final determination of the party to take interest or title to the fuel within 2 working days after the hearing; and

(d) mail notice of the department's determination to interested parties.

(7) (a) The department may determine that the seized fuel be forfeited by the original owner and may:

(i) sell the fuel to the licensed Montana distributor predetermined through a bidding process established in department administrative rule; or

(ii) use the forfeited fuel for a public purpose determined by the department.

(b) The department shall issue a certificate of sale to the licensed distributor who purchases the seized fuel.

(c) The net proceeds from the sale of the fuel must be deposited in the general fund, less:

(i) the applicable taxes, fees, and penalties, which the department shall deposit in a highway revenue account in the state special revenue fund, as required in 15-70-101; and

(ii) the administrative costs incurred in conjunction with the seizure and disposal of the improperly imported fuel.

(8) If the department determines that the original owner of the fuel may reclaim interest or title to the fuel, the department may:

(a) return to the owner money, less tax and penalty, equal to the wholesale value of the fuel on the day of the seizure; or

(b) return the fuel.

(9) A person forfeits the interest, right, and title to improperly imported fuel if the person:

(a) fails to file a claim for the seized fuel within the time allowed in subsection (5); or

(b) is determined to be guilty of violating fuel tax laws.

(10) A person whose fuel is seized under this section is not relieved of any penalties imposed for illegal fuel importation in Title 15, chapter 70.

History: En. Sec. 6, Ch. 236, L. 1997.

15-70-358 through 15-70-360 reserved.

15-70-361. Required records. (1) Except as provided in subsection (5), special fuel purchased and delivered into bulk storage for use in motor vehicles on public roads and nonhighway use must be fully accounted for by detailed withdrawal records to accurately show the manner in which it was used. Special fuel on hand, determined by actual measurement, must be deducted from a claim and must be reported as an opening inventory on the next claim.

(2) Service stations, bulk dealers, and marinas shall prepare a separate and complete invoice for each withdrawal of special fuel for which a refund is to be claimed.

(3) When a highway use of special fuel is not deducted from the claim, the applicant shall substantiate purchases of special fuel and miles traveled for licensed motor vehicles upon request of the department of transportation.

(4) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state license tax on the special fuel used to operate the vehicle on roads or property in private ownership if the person has maintained the following records:

(a) the total number of miles traveled on and off public roads by each licensed vehicle;

(b) the total number of gallons of special fuel used in each vehicle; and

(c) purchase invoices supporting all special fuel handled through bulk storage.

(5) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is not required to keep dispersal records in order to claim a refund of special fuel taxes.

(6) An exporter or any other person who transports special fuel out of Montana for sale, use, or consumption outside Montana shall maintain detailed and current records of

withdrawal, transportation, ownership, and delivery of the special fuel to destinations outside Montana as required by the department.

History: En. Sec. 37, Ch. 525, L. 1993; amd. Sec. 16, Ch. 10, Sp. L. November 1993.

15-70-362. Estimate allowed for agricultural use — seller's signed statement acceptable on keylock or cardtrol purchases. (1) An applicant whose use qualifies as agricultural use may apply for a refund of the applicable tax on the gallons of special fuel as indicated by bulk delivery invoices or by evidence of keylock or cardtrol purchases as an estimate of off-roadway use.

(2) An applicant may apply for a refund of the applicable tax on gallons of special fuel as evidenced by bulk delivery invoices or by evidence of keylock or cardtrol purchases according to the applicant's ratio of gross earned farm income to total gross earned income, excluding unearned income, as follows:

(a) if the ratio is 50% or more, the applicant may apply for a refund of 60% of the special fuel tax;

(b) if the ratio is between 40% and 49%, the applicant may apply for a refund of 50% of the special fuel tax;

(c) if the ratio is between 30% and 39%, the applicant may apply for a refund of 40% of the special fuel tax;

(d) if the ratio is less than 30%, the applicant is not eligible for a refund of the special fuel tax under this section.

(3) If the applicant's ratio in any of the 3 previous years on record is higher than the present year, the highest ratio must be used to calculate the eligible refund.

(4) If any invoice or evidence is either lost or destroyed, the purchaser may support the purchaser's claim for refund by submitting an affidavit relating the circumstances of the loss or destruction and by producing other evidence that may be required by the department of transportation.

(5) An applicant whose use does not qualify as agricultural use may not estimate and shall maintain records as required by 15-70-361.

History: En. Sec. 38, Ch. 525, L. 1993; amd. Sec. 5, Ch. 461, L. 1999.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 127, L. 2001, repealed sec. 7, Ch. 461, L. 1999, which terminated the amendments to this section June 30, 2001. Effective March 26, 2001.

15-70-363. Determination of highway use. Highway use for each vehicle is determined by dividing the rate of the average miles per gallon into the number of miles traveled on public roads. When records are not available, an average of 4 miles per gallon or other methods that have been found acceptable may be used by the department to determine fuel use.

History: En. Sec. 39, Ch. 525, L. 1993; amd. Sec. 9, Ch. 340, L. 1999.

15-70-364. Application for refund or credit — filing — correction by department. (1) (a) Except as provided in subsection (1)(b), the application for a refund must be a signed statement on a form furnished by the department. Except for a claim for a credit for taxes paid on unpaid accounts or taxes paid by the United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state or except for a claim for a refund filed electronically, the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery and must show the total amount of special fuel purchased, the total amount of special fuel on which a refund is claimed, and the amount of the tax claimed for refund. A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(b) A claim for a refund that is filed electronically in the manner specified by the department does not require a signature or the original invoices.

(c) A claim for a refund that is filed electronically does not relieve the taxpayer of maintaining records upon which the claim for a refund is based.

(2) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery, as defined in 15-70-301, is not valid for refund purposes.

(3) All applications for refunds must be filed with the department within 36 months after the date on which the special fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

(4) If the department finds that the statement contains errors that are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement.

History: En. Sec. 40, Ch. 525, L. 1993; amd. Sec. 17, Ch. 10, Sp. L. November 1993; amd. Sec. 10, Ch. 340, L. 1999; amd. Sec. 3, Ch. 110, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 110 at beginning of (1)(a) inserted exception clause and near middle of second sentence after "of this state" inserted exception for refund claim filed electronically; inserted (1)(b) providing that a signature or original invoice is not required for claiming refund filed electronically; inserted (1)(c) providing that claim for refund filed electronically does not relieve taxpayer from maintaining refund records; and made minor changes in style. Amendment effective July 1, 2001.

15-70-365. Approval or rejection of claim. (1) The department of transportation has 120 working days after receiving the claim to approve or reject it. If approved, the department shall issue a credit in lieu of refund for the amount of the claim if the claimant is a distributor; for all other persons, a warrant must be drawn upon the state treasurer for the amount of the claim.

(2) If the department determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the department shall reject the claim in full. If a claim is rejected, the department may suspend the claimant's right to refund for a period not to exceed 1 year.

History: En. Sec. 41, Ch. 525, L. 1993.

15-70-366. Penalties. A distributor or other person who fails, neglects, or refuses to make and file the statements required by this part in the manner or within the time provided, who is delinquent in the payment of any license tax imposed by this part, who makes any false statement with reference to the distributor's business, who makes any false statement on any claim for refund, or who violates any provision of this part shall, in addition to any other penalties imposed, be guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed $1,000 or be imprisoned in the county jail for not to exceed 6 months, or both.

History: En. Sec. 42, Ch. 525, L. 1993.

15-70-367 through 15-70-369 reserved.

15-70-370. *(Effective on occurrence of contingency)* **Tax label on biodiesel pumps.** A fuel pump at a retail outlet that dispenses biodiesel must have a decal designed and produced by the department. The department shall provide the decals, which must be affixed to both sides of the fuel pump and state that the price of the biodiesel fuel reflects a 15% reduction in the amount of state taxes when compared to special fuels. The department may impose a civil penalty for failure to mark a pump that dispenses biodiesel without the appropriate decal. The penalty for each violation is $100 for each fuel pump. The department shall give notice of a violation and, if requested, hold a hearing pursuant to Title 2, chapter 4, part 6, to determine whether a violation occurred. *(Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)*

History: En. Sec. 8, Ch. 568, L. 2001.

Compiler's Comments

Contingent Effective Date: Section 12, Ch. 568, L. 2001, provided: "[This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with."

Contingent Termination: Section 13, Ch. 568, L. 2001, provided: "[This act] terminates June 30 of the fourth year following [the effective date of this act]." Effective on occurrence of contingency.

15-70-371. Marking of dyed diesel fuel pumps. (1) A fuel pump at a retail motor fuel outlet that dispenses nontaxed dyed special fuel for off-road use must be identified by a decal designed by the department and affixed to each side of the fuel pump so as to be easily identified and read by any person operating the fuel pump.

(2) The department may, after giving notice and holding a hearing, if requested, pursuant to Title 2, chapter 4, part 6, impose a civil penalty for failure to mark a dyed fuel pump with the appropriate decal. The penalty for each violation is $100 for each fuel pump.

History: En. Sec. 1, Ch. 295, L. 1999; amd. Sec. 1, Ch. 119, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 119 near beginning of (1) inserted "motor fuel"; inserted (2) authorizing the department, after a requested hearing, to impose a $100 civil penalty for failure to mark a dyed fuel pump; and made minor changes in style. Amendment effective October 1, 2001.

15-70-372. Civil penalty. The department may, after giving notice and holding a hearing, if requested, pursuant to Title 2, chapter 4, part 6, impose a civil penalty not to exceed $100 for any violation of this part. The civil penalty may be in addition to the criminal penalties imposed under 15-70-330, 15-70-336, and 15-70-366.

History: En. Sec. 2, Ch. 115, L. 2001.

Compiler's Comments

Effective Date: Section 6, Ch. 115, L. 2001, provided: "[This act] is effective July 1, 2001."

Part 4 reserved

Part 5
Alcohol Tax Incentive and Administration

15-70-501. Short title. This part may be cited as the "Alcohol Tax Incentive and Administration Act of 1983".

History: En. Sec. 1, Ch. 649, L. 1983.

15-70-502. Purpose. The purpose of this part is to establish schedules for the tax incentive for the production of alcohol to be blended for gasohol and to provide for the proper administration and enforcement of the tax incentive. The schedules for the tax incentive are designed to stimulate the development of alcohol fuel production in Montana while limiting the cost to the state of the tax incentive to amounts that are reasonable in relation to the highway revenue needs of Montana.

History: En. Sec. 2, Ch. 649, L. 1983.

15-70-503. Definitions. As used in this part, the definitions in 15-70-201 and the following definitions apply:

(1) "Alcohol distributor" means any person who, for the purpose of making gasohol, engages in the business of producing alcohol for sale, use, or distribution.

(2) "Department" means the department of transportation.

(3) "Export" means to transport out of Montana from any point of origin within Montana by any means other than in the fuel supply tank of a motor vehicle.

(4) "Gasohol dealer" means any person who blends alcohol with gasoline to produce gasohol for sale, use, or distribution in this state.

History: En. Sec. 3, Ch. 649, L. 1983; amd. Sec. 2, Ch. 697, L. 1985; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 1, Ch. 723, L. 1991.

15-70-504 through 15-70-510 reserved.

15-70-511. Licensing of alcohol distributors. Every alcohol distributor, prior to doing business, shall file with the department an application for a license, using forms prescribed and furnished by the department and setting forth such information as may be requested by the department. Upon approval of the application, the department shall issue the distributor a nonassignable license that continues in force until surrendered or canceled.

History: En. Sec. 4, Ch. 649, L. 1983.

15-70-512. Distributor's statement. Each alcohol distributor shall, not later than the 25th day of each calendar month, render to the department a statement, signed by him, that includes the following:

(1) the number of gallons of alcohol manufactured or imported by the distributor during the preceding calendar month;

(2) the name of each gasohol dealer to whom he sold alcohol and the number of gallons sold to each dealer; and

(3) such other information as the department may reasonably require to administer the tax laws of this state.

History: En. Sec. 5, Ch. 649, L. 1983.

15-70-513. Recordkeeping requirements. The records of each alcohol distributor and gasohol dealer must be kept for a period of not more than 3 years and must include receipts, invoices, and such other information as the department may require.

History: En. Sec. 6, Ch. 649, L. 1983.

15-70-514. Examination of records. The department or its authorized representative may examine the books, papers, records, and equipment of any alcohol distributor or gasohol dealer.

History: En. Sec. 7, Ch. 649, L. 1983.

15-70-515 through 15-70-520 reserved.

15-70-521. Denaturing alcohol — refund authorized. Any alcohol distributor who, for the purpose of denaturing alcohol distilled in Montana, purchases gasoline on which the Montana gasoline tax has been paid is entitled to a refund, computed as allowed in 15-70-221, of tax paid on the gasoline used.

History: En. Sec. 8, Ch. 649, L. 1983.

15-70-522. Tax incentive for production of alcohol — written plan required — reservation of incentives — rules. (1) (a) If the alcohol was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the alcohol was produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to alcohol distributors for distilling alcohol that:

(i) was blended with gasoline for sale as gasohol in Montana;

(ii) was exported from Montana and has been blended with gasoline for sale as gasohol; or

(iii) was used in the production of ethyl butyl ether for use in reformulated gasoline.

(b) Payment must be made by the department out of the amount collected under 15-70-204.

(2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of alcohol distilled in accordance with subsection (1) is 30 cents a gallon for each gallon that is 100% produced from Montana products, with the amount of the tax incentive for each gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the alcohol. Beginning July 1, 2010, there is no tax incentive.

(3) Regardless of the alcohol tax incentive provided in subsection (2), the total payments made for the incentive under this part may not exceed $6 million in any consecutive 12-month period.

(4) An alcohol distributor may not receive tax incentive payments under subsection (2) that exceed $3 million in any consecutive 12-month period.

(5) An alcohol distributor may not receive tax incentive payments under subsection (2) unless the distributor has provided a written plan to the department of transportation at least 24 months before the distributor's anticipated collection of the tax incentives. The plan must contain the following information:

(a) the source or sources of financing for the acquisition of the plant, land, and equipment used for the production of gasohol;

(b) the anticipated source of agricultural products used in the production of gasohol; and

(c) the anticipated time, quantity, and duration of production of gasohol.

(6) (a) Except as provided in subsection (6)(b), the department shall reserve, in the order that written plans required under subsection (5) are received by the department, alcohol tax incentives based on the anticipated time, quantity, and duration of production. Payment of the alcohol tax incentives must be based on actual production.

(b) No later than 1 year after the written plan is received under subsection (5), the department shall determine whether an alcohol distributor is complying with the written plan. The department may reduce or cancel the reservation of the tax incentive provided in this subsection (6) if the department determines that the alcohol distributor has not materially complied with the written plan.

(7) A new tax incentive payment may not be made if the total tax incentive established in subsection (3) has been reserved or paid. If an alcohol tax incentive has been reduced or canceled, the amount by which the tax incentive has been reduced or canceled is available for reservation as provided in subsection (6)(a).

(8) The department shall prescribe rules necessary to carry out the provisions of this section.

History: En. Sec. 9, Ch. 649, L. 1983; amd. Sec. 3, Ch. 697, L. 1985; amd. Sec. 1, Ch. 593, L. 1989; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 2, Ch. 723, L. 1991; amd. Sec. 1, Ch. 592, L. 1993; amd. Sec. 1, Ch. 510, L. 1997; amd. Sec. 1, Ch. 532, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 532 in (2) in second sentence substituted "July 1, 2010" for "July 1, 2005"; in (5) near beginning after "distributor" deleted "who begins production after July 1, 1991" and near middle after "at least" substituted "24 months" for "18 months"; deleted former (6) that read: "(6) An alcohol distributor in production before July 1, 1991, is entitled to apply for the maximum tax incentive payment allowed under subsection (4) without providing a written plan as required in subsection (5)"; and made minor changes in style. Amendment effective October 1, 2001.

15-70-523. Application for payment of tax incentive. (1) The claimant shall apply for payment of tax incentive by signed statement, on a form furnished by the department. The form must be accompanied by:

(a) the original production records and invoices issued to the gasohol dealer at the time of sale and delivery, showing total gallons of alcohol sold; and

(b) a certificate of blending issued by the alcohol purchaser showing the total gallons of alcohol blended and the date of blending.

(2) Application for the payment of the tax incentives must be filed with the department not later than the 25th day of the calendar month following the month for which the claim is being made.

History: En. Sec. 10, Ch. 649, L. 1983; amd. Sec. 4, Ch. 697, L. 1985.

15-70-524 through 15-70-526 reserved.

15-70-527. Penalty for failure to file. Any alcohol distributor who fails to obtain a license under 15-70-511 or to file the statements required by 15-70-512 in the manner or within the time provided in 15-70-512 or who makes any false statement is guilty of a misdemeanor and upon conviction must be fined not more than $1,000 or imprisoned in the county jail for not more than 6 months, or both.

History: En. Sec. 11, Ch. 649, L. 1983.

Part 6 reserved

Part 7
Compressed Natural Gas Tax

15-70-701. Definitions. As used in this part, the following definitions apply:

(1) "Bond" means:

(a) a bond executed by a compressed natural gas dealer or a liquefied petroleum gas dealer as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, conditioned upon performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the compressed natural gas dealer or the liquefied petroleum gas dealer arising out of this part; or

(b) a deposit with the department by the compressed natural gas dealer or the liquefied petroleum gas dealer, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(2) "Compressed natural gas" means a product that is used as a fuel and that contains carbon or hydrogen, or both, and is compressed to greater than 24 pounds per square inch absolute base pressure and up to 3,600 pounds per square inch absolute base pressure when sold for use in motor vehicles operated on the public roads and highways of this state.

(3) "Compressed natural gas dealer" or "dealer" means a person who delivers any part of compressed natural gas into the fuel supply tank or tanks of a motor vehicle.

(4) "Department" means the department of transportation.

(5) "Liquefied petroleum gas" means any petroleum product that is sold for use in motor vehicles and that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons:

(a) propane;

(b) propylene;

(c) butane, including normal butane or isobutane; or

(d) butylene.

(6) "Liquefied petroleum gas dealer" or "dealer" means a person who delivers any part of liquefied petroleum gas into the fuel supply tank or tanks of a motor vehicle.

(7) "Motor vehicle" means any vehicle that is self-propelled by compressed natural gas or by liquefied petroleum gas and that is driven upon the public roads and highways of this state.

(8) (a) "Person" means a person, firm, association, joint-stock company, syndicate, partnership, or corporation.

(b) When used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, person means the partners or members of a firm, association, syndicate, or partnership. As applied to a joint-stock company or corporation, the term means the officers of the joint-stock company or corporation.

(9) "Public roads and highways of this state" means all streets, roads, highways, and related structures that are:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

History: En. Sec. 1, Ch. 405, L. 1995; amd. Sec. 1, Ch. 125, L. 1997; amd. Sec. 29, Ch. 125, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 125 in definition of public roads and highways of this state in (c) inserted references to Title 60, chapter 4, and Title 70, chapter 30; and made minor changes in style. Amendment effective October 1, 2001.

15-70-702. Compressed natural gas dealer's or liquefied petroleum gas dealer's license. A person may not act as a compressed natural gas dealer or as a liquefied petroleum gas dealer in this state unless the person holds a valid compressed natural gas dealer's license or a valid liquefied petroleum gas dealer's license issued by the department.

History: En. Sec. 2, Ch. 405, L. 1995; amd. Sec. 2, Ch. 125, L. 1997.

15-70-703. Application for license. An application for a compressed natural gas dealer's license or a liquefied petroleum gas dealer's license must be filed on a form prescribed by the department. The application must contain information that the department considers necessary.

History: En. Sec. 3, Ch. 405, L. 1995; amd. Sec. 3, Ch. 125, L. 1997.

15-70-704. Bonding, release of surety, and additional bond. (1) Except as provided in this section, a compressed natural gas dealer's license or a liquefied petroleum gas dealer's license may not be issued to a person and may not be continued in force unless the person has furnished a bond, in a form prescribed by the department, to secure the dealer's compliance with this part and has paid all taxes, interest, and penalties due under this part. The department shall waive the bond requirement of a compressed natural gas dealer or a liquefied petroleum gas dealer who is not subject to the provisions of subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required must be equivalent to twice the compressed natural gas dealer's or the liquefied petroleum gas dealer's estimated quarterly tax payments but may not be less than $1,000 for any compressed natural gas dealer or liquefied petroleum gas dealer who:

(a) requests a compressed natural gas dealer's or a liquefied petroleum gas dealer's license to be reissued after the license was canceled for cause; or

(b) fails to file timely reports and pay the tax due as required by 15-70-714.

(3) A surety on a bond furnished as provided in this section must be released and discharged from any liability to the state accruing on the bond after 30 days from the date when the surety has provided to the department a written request to be released and discharged. However, this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. Upon receiving a release request, the department shall promptly notify the compressed natural gas dealer or the liquefied petroleum gas dealer who furnished the bond, and unless the dealer, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as described in 15-70-701(1)(b), the department shall cancel the dealer's license.

(4) The department may require a compressed natural gas dealer or a liquefied petroleum gas dealer to give a new or additional surety bond or to deposit additional securities pursuant to 15-70-701(1)(b) if the department determines that the security of the surety bond previously filed by the dealer or the market value of the property deposited as security by the dealer is impaired or inadequate. If the compressed natural gas dealer or the liquefied petroleum gas dealer fails to give an additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the dealer's license.

History: En. Sec. 4, Ch. 405, L. 1995; amd. Sec. 4, Ch. 125, L. 1997; amd. Sec. 1, Ch. 38, L. 1999.

15-70-705. Issuance of license — grounds for refusal — hearing. (1) Except as provided in subsection (2), upon receipt of the application and bond in proper form, the department shall issue to the applicant a license to act as a compressed natural gas dealer or as a liquefied petroleum gas dealer. A license is valid until suspended, revoked for cause, or otherwise canceled.

(2) The department may refuse to issue a compressed natural gas dealer's license or a liquefied petroleum gas dealer's license to any person:

(a) who formerly held a license that, prior to the time of filing the application, has been revoked for cause;

(b) who is not the real party in interest, and the license of the real party in interest has been revoked for cause prior to the time of filing the application; or

(c) upon other sufficient cause being shown.

(3) Before refusing to issue a license, the department shall grant the applicant a hearing and shall provide the dealer with at least 10 days' written notice of the time and place of hearing.

(4) A compressed natural gas dealer's license or a liquefied petroleum gas dealer's license is not transferable.

History: En. Sec. 5, Ch. 405, L. 1995; amd. Sec. 5, Ch. 125, L. 1997.

15-70-706. Revocation of license — notice. (1) The department may revoke the license of any compressed natural gas dealer or liquefied petroleum gas dealer for reasonable cause. Before revoking a license, the department shall notify the licensee of the department's intent to revoke the license. The notice must be made by certified mail addressed to the licensee's last-known address shown in the files of the department. The notice must include a statement that the licensee has the right to appear before the department at a time specified in the notice and to show cause, if any, why the license should not be revoked. The time specified by the department may not be more than 30 days or less than 10 days from the date of the notice. At any time prior to and during the hearing, the department may in the exercise of reasonable discretion suspend the license.

(2) Upon revocation of a license, the licensee shall immediately surrender the license to the department for cancellation.

History: En. Sec. 6, Ch. 405, L. 1995; amd. Sec. 6, Ch. 125, L. 1997.

15-70-707. Cancellation of license upon surrender. The department shall cancel a license to act as a compressed natural gas dealer or as a liquefied petroleum gas dealer immediately upon surrender of the license by the licensee.

History: En. Sec. 7, Ch. 405, L. 1995; amd. Sec. 7, Ch. 125, L. 1997.

15-70-708 through 15-70-710 reserved.

15-70-711. Tax on compressed natural gas — tax on liquefied petroleum gas. (1) Each compressed natural gas dealer shall collect the tax on compressed natural gas from the user at the time that the compressed natural gas is placed into the supply tank of a motor vehicle.

(2) (a) The total tax due on compressed natural gas is computed according to the formula provided in subsection (2)(b).

(b) $T = (R/V) \times TV$, where:

(i) T is the total tax due;

(ii) R is 7 cents;

(iii) V is 120 cubic feet of compressed natural gas at 14.73 pounds per square inch absolute base pressure; and

(iv) TV is the total volume of compressed natural gas placed into the supply tank of a motor vehicle.

(3) The compressed natural gas dealer shall pay the tax to the department as provided in 15-70-714.

(4) Each liquefied petroleum gas dealer shall collect the tax on liquefied petroleum gas from the user at the time that the liquefied petroleum gas is placed into the supply tank of a motor vehicle.

(5) (a) The total tax due on liquefied petroleum gas is computed according to the formula provided in subsection (5)(b).

(b) $T = (C/G) \times TG$, where:

(i) T is the total tax due;

(ii) C is 5.18 cents;

(iii) G is 1 gallon of liquefied petroleum gas; and

(iv) TG is the total gallons of liquefied petroleum gas placed into the supply tank of a motor vehicle.

(6) The liquefied petroleum gas dealer shall pay the tax to the department as provided in 15-70-714.

(7) The United States, the state of Montana, and any political subdivision of this state are exempt from the levy and imposition of this tax.

History: En. Sec. 8, Ch. 405, L. 1995; amd. Sec. 8, Ch. 125, L. 1997.

15-70-712. Recordkeeping. (1) Each compressed natural gas dealer, each liquefied petroleum gas dealer, and each person importing, manufacturing, refining, dealing in, transporting, or storing compressed natural gas or liquefied petroleum gas in this state shall keep all records, receipts, invoices, and other pertinent documents that the department may require and shall produce them for the inspection of the department at any time during regular business hours.

(2) The records, receipts, invoices, and other pertinent documents must be kept for a period of at least 3 years from the date on which the return to which they relate was required to have been made.

History: En. Sec. 9, Ch. 405, L. 1995; amd. Sec. 9, Ch. 125, L. 1997.

15-70-713. Examination of records — enforcement — reciprocity. (1) The department shall enforce the provisions of this part.

(2) The department or its authorized representative may examine the records, receipts, invoices, documents, and equipment of any compressed natural gas dealer, any liquefied petroleum gas dealer, or any person importing, manufacturing, refining, dealing in, transporting, or storing compressed natural gas or liquefied petroleum gas and may investigate the character of the disposition that any person makes of compressed natural gas or liquefied petroleum gas in order to determine whether all taxes due under this part are being properly reported and paid. If the records, receipts, invoices, documents, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department or at the business location of the dealer or other person and must, if requested by the department, be accompanied by the dealer or other person.

(3) The department shall, upon request from an official who is responsible for the enforcement of the compressed natural gas tax law or the liquefied petroleum gas tax law of any other state, the District of Columbia, the United States, a territory or possession of the United States, or a province of Canada, forward to the official any information that it has relative to the receipt, storage, delivery, sale, use, or other disposition of compressed natural gas or liquefied petroleum gas by any compressed natural gas dealer or liquefied petroleum gas dealer if the other governmental entity furnishes similar information to the department.

History: En. Sec. 10, Ch. 405, L. 1995; amd. Sec. 10, Ch. 125, L. 1997.

15-70-714. Returns required — payment. (1) For the purpose of determining the amount of liability for the tax due under this part, a compressed natural gas dealer and a liquefied petroleum gas dealer shall file with the department a quarterly tax return on forms prescribed by the department.

(2) The dealer shall file the return on or before the last day of the next calendar month following the quarter to which it relates. For good cause, the department may grant a taxpayer a reasonable extension of time for filing, but the extension may not exceed 30 days.

(3) The tax return must be accompanied by payment of the amount of tax due under 15-70-711 for compressed natural gas or liquefied petroleum gas sold during the preceding quarter.

History: En. Sec. 11, Ch. 405, L. 1995; amd. Sec. 11, Ch. 125, L. 1997; amd. Sec. 2, Ch. 38, L. 1999.

15-70-715. Penalties for refusal or failure to file return or pay tax when due. (1) If a compressed natural gas dealer or a liquefied petroleum gas dealer refuses or fails to file a return required by this part within the time prescribed by 15-70-103 and 15-70-714, there is imposed a penalty of $25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for each calendar month or fraction of a month during which the refusal or failure continues. If a compressed natural gas dealer or a liquefied petroleum gas dealer establishes to the satisfaction of the department that the failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty imposed by this section.

(2) Whenever a compressed natural gas dealer or a liquefied petroleum gas dealer files a return but fails to pay in whole or in part the tax due under this part, there must be added to the unpaid amount due interest at the rate of 1% a month or fraction of a month from the date on which the tax was due to the date of payment in full.

History: En. Sec. 12, Ch. 405, L. 1995; amd. Sec. 12, Ch. 125, L. 1997.

15-70-716. Deficiency — penalty. If the department determines that the tax reported by a compressed natural gas dealer or a liquefied petroleum gas dealer is deficient, the department shall assess the deficiency on the basis of information available to the department. There must be added to the deficiency interest on the deficient amount at the rate of 1% a month or fraction of a month from the date on which the return was due.

History: En. Sec. 13, Ch. 405, L. 1995; amd. Sec. 13, Ch. 125, L. 1997.

15-70-717. Determination if no return made — penalty — presumption. (1) If a compressed natural gas dealer or a liquefied petroleum gas dealer, whether or not the dealer is licensed, fails, neglects, or refuses to file a compressed natural gas tax return or a liquefied petroleum gas tax return when due, the department shall, on the basis of information available to the department, determine the tax liability of the compressed natural gas dealer or the liquefied petroleum gas dealer for the period during which a return was not filed and add to the tax determined the penalty and interest provided for in 15-70-715.

(2) An assessment made by the department pursuant to 15-70-715, 15-70-716, or this section is presumed to be correct. Whenever the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by a preponderance of the evidence that it is erroneous or excessive.

History: En. Sec. 14, Ch. 405, L. 1995; amd. Sec. 14, Ch. 125, L. 1997.

15-70-718. Fraudulent return — penalty. If a compressed natural gas dealer or a liquefied petroleum gas dealer files a fraudulent return with intent to evade the tax imposed by this part:

(1) there must be added to the amount of deficiency determined by the department a penalty equal to 25% of the deficiency, together with interest at the rate of 1% a month or fraction of a month on the deficiency from the date on which the tax was due to the date of payment. The penalty and interest are in addition to all other penalties prescribed by law.

(2) the person is guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than $100 or more than $2,000 or imprisonment of not less than 30 days or more than 6 months, or both.

History: En. Sec. 15, Ch. 405, L. 1995; amd. Sec. 15, Ch. 125, L. 1997.

15-70-719. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded after the lien is filed by the department. An action may not be maintained to enjoin the collection of all or any part of the license tax.

History: En. Sec. 16, Ch. 405, L. 1995.

15-70-720. Statute of limitations. Except in the case of a fraudulent return or of neglect or refusal to make a return, a deficiency must be assessed within 3 years from the due date of the return or the date of filing the return.

History: En. Sec. 17, Ch. 405, L. 1995.

CHAPTER 71

LICENSE TAX ON VEHICLES PROPELLED BY LIQUEFIED PETROLEUM GAS

Part 1 — General Provisions
(Repealed and Terminated)

15-71-101 through 15-71-105. Repealed.
15-71-106 through 15-71-109 reserved.
15-71-110. Repealed.
15-71-111. Terminated.

Part 1

General Provisions
(Repealed and Terminated)

15-71-101 through 15-71-105. Repealed. Sec. 17, Ch. 125, L. 1997.

Compiler's Comments

Histories of Repealed Sections:

15-71-101. En. 84-1862 by Sec. 3, Ch. 473, L. 1975; amd. Sec. 1, Ch. 47, L. 1977; R.C.M. 1947, 84-1862; amd. Sec. 1, Ch. 595, L. 1987; amd. Sec. 1, Ch. 94, L. 1991; amd. Sec. 3, Ch. 512, L. 1991.

15-71-102. En. 84-1862.1 by Sec. 2, Ch. 47, L. 1977; R.C.M. 1947, 84-1862.1; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 5, Ch. 575, L. 1993; amd. Sec. 19, Ch. 405, L. 1995.

15-71-103. En. 84-1863 by Sec. 4, Ch. 473, L. 1975; amd. Sec. 3, Ch. 47, L. 1977; R.C.M. 1947, 84-1863.

15-71-104. En. 84-1865 by Sec. 6, Ch. 473, L. 1975; R.C.M. 1947, 84-1865; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 19, Ch. 455, L. 1993; amd. Sec. 22, Ch. 18, L. 1995; amd. Sec. 13, Ch. 509, L. 1995.

15-71-105. En. 84-1864 by Sec. 5, Ch. 473, L. 1975; R.C.M. 1947, 84-1864.

15-71-106 through 15-71-109 reserved.

15-71-110. Repealed. Sec. 17, Ch. 125, L. 1997.
History: En. Sec. 3, Ch. 428, L. 1993.

15-71-111. Terminated. Sec. 39, Ch. 15, Sp. L. July 1992.
History: En. Sec. 19, Ch. 15, Sp. L. July 1992.

CHAPTER 72

ELECTRICAL GENERATION TAX

Part 1 — Electrical Generation Tax Reform Act

15-72-101. Short title.
15-72-102. Legislative findings and declaration of purpose.
15-72-103. Definitions.
15-72-104. Wholesale energy transaction tax — rate of tax — exemptions — cost recovery.
15-72-105. Multistate exemption.
15-72-106. Collection of wholesale energy transaction tax — disposition of revenue.
15-72-107 through 15-72-109 reserved.
15-72-110. Returns — payment — authority of department.
15-72-111. Examination of return — adjustments — delivery of notices and demands.
15-72-112. Penalties and interest for violation.
15-72-113. Authority to collect delinquent taxes.
15-72-114. Interest on deficiency — penalty.
15-72-115. Limitations.
15-72-116. Refunds — interest — limitations.
15-72-117. Administration — rules.

Part 1
Electrical Generation Tax Reform Act

15-72-101. Short title. This part may be cited as the "Electrical Generation Tax Reform Act".
History: En. Sec. 1, Ch. 556, L. 1999.

15-72-102. Legislative findings and declaration of purpose. (1) The legislature finds that the restructuring of the electric utility industry in Montana implemented by Chapter 505, Laws of 1997, including the unbundling of services and the provision that allows Montana customers to choose their supplier of electricity and related services in a competitive market, renders the existing method of property taxation of the electric utility industry an impediment to competition.

(2) The legislature further finds that the restructuring of the electric utility industry necessitates changes to the existing system of property taxation that include reducing the tax rate applied to electrical generation facilities and imposing a replacement tax in order to:

(a) avoid placing a supplier engaged in the business of generating, supplying, or selling electricity at a competitive advantage or disadvantage;

(b) preserve the revenue base of the existing property tax system for taxing jurisdictions in the state;

(c) minimize the shift in tax burden and the imposition of a higher tax burden on consumers of electricity; and

(d) minimize additional administrative costs and the burden of compliance.

(3) The legislature further finds that a reduction in the property tax rates applied to electrical generation facilities must be replaced by a wholesale energy transmission tax imposed on each kilowatt hour of electricity transmitted in the state.

(4) The legislature further finds that existing property tax rates applied to electrical transmission and distribution systems are appropriate for a regulated function.

(5) The legislature therefore declares that there is a compelling public need to modify the existing system of property taxation of electrical generation facilities and to impose a wholesale energy transaction tax on kilowatt hours of electricity transmitted in the state to ensure competitive neutrality and to provide replacement revenue to taxing jurisdictions in the state.

History: **En. Sec. 2, Ch. 556, L. 1999.**

15-72-103. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Customer" or "purchaser" means a person who acquires for consideration electricity for use or consumption and not for resale.

(2) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of electricity to the public. A distribution services provider includes a purchaser who takes electricity directly from a transmission line and a purchaser who generates electricity for the purchaser's own use but does not include electricity generated by the purchaser for noncommercial use or for agricultural use.

(3) "Person" means an individual, estate, trust, receiver, cooperative association, corporation, limited liability company, firm, partnership, joint venture, syndicate, or other entity, including any gas or electric utility owned or operated by a county, municipality, or other political subdivision of the state.

(4) "Transmission services provider" means a person controlling or operating transmission facilities as that term is defined in 69-8-103.

History: **En. Sec. 3, Ch. 556, L. 1999.**

15-72-104. Wholesale energy transaction tax — rate of tax — exemptions — cost recovery. (1) (a) Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity transmitted within the state as provided in this section. The tax is imposed at a rate of 0.015 cent per kilowatt hour of electricity transmitted by a transmission services provider in the state.

(b) For electricity produced in the state for delivery outside of the state, the taxpayer is the person owning or operating the electrical generation facility producing the electricity. The transmission services provider shall collect the tax from the person based upon the kilowatt hours introduced onto transmission lines from the electrical generation facility. The amount of kilowatt hours subject to tax must be reduced by 5% to compensate for transmission line losses.

(c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider. The taxpayer may apply for a refund for overpayment of taxes pursuant to 15-72-116.

(d) For electricity produced outside the state for delivery inside the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.

(e) For electricity delivered to a distribution services provider that is a rural electric cooperative for delivery to purchasers that have opted for customer choice under the provisions of Title 69, chapter 8, part 3, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based on the amount of kilowatt hours of electricity delivered to the distribution services provider that is attributable to customers that have opted for customer choice.

(f) For electricity delivered to a distribution services provider that prior to May 2, 1999, was owned by a public utility as defined in 69-3-101, the tax is imposed on the successor distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.

(2) (a) If more than one transmission services provider transmits electricity, the last transmission services provider transmitting or delivering the electricity shall collect the tax.

(b) If the transmission services provider is an agency of the United States government, the distribution services provider receiving the electricity shall self-assess the tax subject to the provisions of this part.

(c) If an electrical generation facility located within the state produces electricity for sale inside and outside the state, sales within the state are considered to have come from electricity produced within the state for purposes of the tax imposed by this section.

(3) (a) Electricity transmitted through the state that is not produced or delivered in the state is exempt from the tax imposed by this section.

(b) Electricity produced in the state by an agency of the United States government or electricity produced from an electric energy generation facility, as defined in 90-5-101(3), constructed after May 1, 2001, that is within the exterior boundaries of a Montana Indian reservation for delivery outside of the state is exempt from the tax imposed by this section.

(c) Electricity produced by wind turbines erected on state land for which annual lease payments are made to the permanent school trust fund is exempt from the tax imposed by this section.

(d) Electricity delivered to a distribution services provider that is a municipal utility described in 69-8-103(5)(b) or a rural electric cooperative organized under the provisions of Title 35, chapter 18, is exempt from the tax imposed by this section.

(e) Electricity delivered to a purchaser that receives its power directly from a transmission or distribution facility owned by an entity of the United States government on or before May 2, 1997, or electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of the United States government on or before May 2, 1997, is exempt from the tax imposed by this section.

[(f) Electricity delivered by a distribution services provider to a customer with loads of 1,000 kilowatts or greater that was first served by a public utility after December 31, 1996, is exempt from the tax imposed by this section, provided that the customer purchases the electricity pursuant to a contract or contracts that establish the purchase price or prices of electricity. The exemption allowed by this subsection (3)(f) does not apply to electricity purchased under a renewal or extension of an existing contract or existing contracts.]

(4) A distribution services provider is allowed to recover the tax imposed by this section and the administrative costs to comply with this part in its rates. *(Bracketed language terminates January 1, 2003—sec. 40, Ch. 556, L. 1999.)*

History: En. Sec. 4, Ch. 556, L. 1999; amd. Sec. 3, Ch. 541, L. 2001; amd. Sec. 16, Ch. 591, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 541 in (3)(b) near middle after "United States government" inserted "or electricity produced from an electric energy generation facility, as defined in 90-5-101(3), constructed after May 1, 2001, that is within the exterior boundaries of a Montana Indian reservation"; and made minor changes in style. Amendment effective January 1, 2002.

Chapter 591 inserted (3)(c) concerning electricity from wind turbines on state land; and made minor changes in style. Amendment effective July 1, 2001.

15-72-105. Multistate exemption. A person, upon proof that the person has paid a tax in another state on the transmission of electricity, is allowed a credit against the tax imposed by this part if the tax has been paid in another state.

History: En. Sec. 5, Ch. 556, L. 1999.

15-72-106. Collection of wholesale energy transaction tax — disposition of revenue. (1) A transmission services provider shall collect the tax imposed under 15-72-104 from the taxpayer and pay the tax collected to the department. If the transmission services provider collects a tax in excess of the tax imposed by 15-72-104, both the tax and the excess must be remitted to the department.

(2) A self-assessing distribution services provider is subject to the provisions of this part.

(3) The wholesale energy transaction tax collected under this part must be deposited in the general fund.

History: En. Sec. 6, Ch. 556, L. 1999.

15-72-107 through 15-72-109 reserved.

15-72-110. Returns — payment — authority of department. (1) On or before the 30th day of the month following the end of the calendar quarter in which the tax imposed by this part is payable, a return, on a form provided by the department, and payment of the tax for the preceding calendar quarter must be filed with the department.

(2) Each person engaged in transmitting electricity in this state that is subject to the tax under this part shall file a return.

(3) (a) A person required to collect and pay to the department the tax imposed by this part shall keep records, render statements, make returns, and comply with the provisions of this part and the rules prescribed by the department. Each return or statement must include the information required by the rules of the department.

(b) For the purpose of determining compliance with the provisions of this part, the department is authorized to examine or cause to be examined any books, papers, records, or memoranda relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda are the property of or in the possession of the person filing the return or another person. In determining compliance, the department may use statistical sampling and other sampling techniques consistent with generally accepted auditing standards. The department may also:

(i) require the attendance of a person having knowledge or information relevant to a return;

(ii) compel the production of books, papers, records, or memoranda by the person required to attend;

(iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or may be jeopardized because of delay;

(iv) take testimony on matters material to the determination; and

(v) administer oaths or affirmations.

(4) Pursuant to rules established by the department, returns may be computer-generated and electronically filed.

History: En. Sec. 7, Ch. 556, L. 1999.

15-72-111. Examination of return — adjustments — delivery of notices and demands. (1) If the department determines that the amount of tax due is different from the amount reported, the amount of tax computed on the basis of the examination conducted pursuant to 15-72-110 constitutes the tax to be paid.

(2) If the tax due exceeds the amount of tax reported as due on the taxpayer's return, the excess must be paid to the department within 30 days after notice of the amount and demand for payment is mailed or delivered to the person making the return unless the taxpayer files a timely objection as provided in 15-1-211. If the amount of the tax found due by the department is less than that reported as due on the return and has been paid, the excess must be credited or, if no tax liability exists or is likely to exist, refunded to the person making the return.

(3) The notice and demand provided for in this section must contain a statement of the computation of the tax and interest and must be:

(a) sent by mail to the taxpayer at the address given in the taxpayer's return, if any, or to the taxpayer's last-known address; or

(b) served personally upon the taxpayer.

(4) A taxpayer filing an objection to the demand for payment is subject to and governed by the uniform tax review procedure provided in 15-1-211.

History: En. Sec. 8, Ch. 556, L. 1999.

15-72-112. Penalties and interest for violation. (1) (a) A person who fails to file a return as required by 15-72-110 must be assessed a penalty as provided in 15-1-216. The department may waive the penalty as provided in 15-1-206.

(b) A person who fails to file the return required by 15-72-110 and to pay the tax before the due date must be assessed penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(2) A person who purposely fails to pay the tax when due must be assessed an additional penalty as provided in 15-1-216.

History: En. Sec. 9, Ch. 556, L. 1999.

15-72-113. Authority to collect delinquent taxes. (1) (a) The department shall collect taxes that are delinquent as determined under this part.

(b) If a tax imposed by this part or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

(2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds that are due to the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a review on the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before funds are available for offset.

History: En. Sec. 10, Ch. 556, L. 1999.

15-72-114. Interest on deficiency — penalty. (1) Interest accrues on unpaid or delinquent taxes as provided in 15-1-216. The interest must be computed from the date on which the return and tax were originally due.

(2) If the payment of a tax deficiency is not made within 60 days after it is due and payable and if the deficiency is due to negligence on the part of the taxpayer but without fraud, the penalty imposed by 15-1-216(1)(c) must be added to the amount of the deficiency.

History: En. Sec. 11, Ch. 556, L. 1999.

15-72-115. Limitations. (1) Except in the case of a person who purposely or knowingly, as those terms are defined in 45-2-101, files a false or fraudulent return violating the provisions of this part, a deficiency may not be assessed or collected with respect to a month or quarter for which a return is filed unless the notice of additional tax proposed to be assessed is mailed to or personally served upon the taxpayer within 5 years from the date on which the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered to be filed on the last day.

(2) If, before the expiration of the 5-year period prescribed in subsection (1) for assessment of the tax, the taxpayer consents in writing to an assessment after expiration of the 5-year period, a deficiency may be assessed at any time prior to the expiration of the period consented to.

History: En. Sec. 12, Ch. 556, L. 1999.

15-72-116. Refunds — interest — limitations. (1) A claim for a refund or credit as a result of overpayment of taxes collected under this part must be filed within 5 years of the date on which the return was due, without regard to any extension of time for filing.

(2) (a) Interest on an overpayment must be paid or credited at the same rate as the interest rate charged on unpaid taxes as provided in 15-1-216.

(b) Except as provided in subsection (2)(c), interest must be paid from the date on which the return was due or the date of overpayment, whichever is later. Interest does not accrue during any period in which the processing of a claim is delayed more than 30 days because the taxpayer has not furnished necessary information.

(c) The department is not required to pay interest if:

(i) the overpayment is refunded or credited within 6 months of the date on which a claim was filed; or

(ii) the amount of overpayment and interest does not exceed $1.

History: En. Sec. 13, Ch. 556, L. 1999.

15-72-117. Administration — rules. The department shall:

(1) administer and enforce the provisions of this part;

(2) cause to be prepared and distributed forms and information that may be necessary to administer the provisions of this part; and

(3) adopt rules that may be necessary or appropriate to administer and enforce the provisions of this part.

History: En. Sec. 14, Ch. 556, L. 1999.

TITLE 16

ALCOHOL AND TOBACCO

Ch.
1. Administration and Taxation.
2. State Liquor Stores.
3. Control of Liquor, Beer, and Wine.
4. License Administration.
5. Identification Cards. Repealed. Sec. 2, Ch. 26, L. 1979.
6. Enforcement.
Chapters 7 through 9 reserved.
10. Regulation of Cigarette Marketing.
11. Taxation of Tobacco Products.

CHAPTER 1

ADMINISTRATION AND TAXATION

Part 1 — General Provisions

16-1-101. Citation — declaration of policy — subject matters of regulation.
16-1-102. Policy as to sale of beer.
16-1-103. Policy as to retail sale of liquor.
16-1-104. Intent and construction of code.
16-1-105. Divisions of code.
16-1-106. Definitions.

Part 2 — Scope of Code and Exemptions

16-1-201. Acts not covered by code.
16-1-202. Preparations not subject to code.
16-1-203. Health professions exemption.
16-1-204. Licensed hospital or health care facility.
16-1-205. Local option.

Part 3 — Department of Revenue Powers, Duties, and Limitations

16-1-301. Administration of code.
16-1-302. Functions, powers, and duties of department.
16-1-303. Department rules.
16-1-304. Prohibited acts.
16-1-305. Title to property and moneys — administrative expenses.
16-1-306. Revenue to be paid to state treasurer.

Part 4 — Taxation of Alcoholic Beverages

16-1-401. Liquor excise tax.
16-1-402. Payment of excise tax by carriers.
16-1-403. Excise tax accounting methods — report forms — penalty and interest.
16-1-404. License tax on liquor — amount — distribution of proceeds.
16-1-405. Use of license tax proceeds.
16-1-406. Taxes on beer.
16-1-407. Repealed.
16-1-408. Repealed.
16-1-409. Failure to make beer tax returns — penalties and interest.
16-1-410. Repealed.
16-1-411. Tax on wine and hard cider — penalty and interest.
16-1-412 through 16-1-420 reserved.
16-1-421. Terminated.
16-1-422. Terminated.
16-1-423. Terminated.

Part 1
General Provisions

16-1-101. Citation — declaration of policy — subject matters of regulation. (1) Chapters 1 through 6 of this title may be cited as the "Montana Alcoholic Beverage Code".

(2) It is hereby declared to be the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale, importation, and distribution of alcoholic beverages within the state of Montana, as that term is defined in this code, subject to the authority of the state of Montana through the Montana department of revenue.

(3) This code is an exercise of the police power of the state, in and for the protection of the welfare, health, peace, morals, and safety of the people of the state, and of the state's power under the 21st amendment to the United States constitution to control the transportation and importation of alcoholic beverages into the state. The provisions of this code must be broadly construed to accomplish these purposes.

History: En. Sec. 1, Ch. 105, L. 1933; re-en. Sec. 2815.60, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1951; Sec. 4-101, R.C.M. 1947; amd. and redes. 4-1-101 by Sec. 1, Ch. 387, L. 1975; R.C.M. 1947, 4-1-101; amd. Sec. 1, Ch. 68, L. 1987; amd. Sec. 1, Ch. 543, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 543 in (2) near middle after "sale" inserted "importation"; and in (3) at end of first sentence substituted "and of the state's power under the 21st amendment to the United States constitution to control the transportation and importation of alcoholic beverages into the state" for "and its provisions shall be construed for the accomplishment of such purposes" and inserted last sentence concerning broad construction. Amendment effective May 1, 2001.

16-1-102. Policy as to sale of beer. It is hereby declared to be the policy of the state of Montana that the manufacture, transportation, distribution, sale, and possession of "beer", as that term is defined in this code and which contains not more than 7% of alcohol by weight, shall be controlled and regulated as provided under this code. Beer, porter, ale, stout, and malt liquors containing more than 7% of alcohol by weight and which are defined as "liquor" shall be subject to the regulations and controls provided for liquor.

History: En. Sec. 1, Ch. 106, L. 1933; re-en. Sec. 2815.10, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1951; Sec. 4-301, R.C.M. 1947; amd. and redes. 4-1-102 by Sec. 45, Ch. 387, L. 1975; R.C.M. 1947, 4-1-102.

16-1-103. Policy as to retail sale of liquor. It is the policy of the state that it is necessary to further regulate and control the sale and distribution of alcoholic beverages within the state and to ensure that the department has complete regulatory control of the sale of liquor in this state. It is advisable and necessary, in addition to the operation of the agency liquor stores now provided by law, that the department be empowered and authorized to grant licenses to persons qualified under this code to sell liquor purchased by them at agency liquor stores at retail posted price in accordance with this code and under rules promulgated by the department and under its strict supervision and control and to provide severe penalty for the sale of liquor except by and in agency liquor stores and by persons licensed under this code. The restrictions, regulations, and provisions contained in this code are enacted by the legislature for the protection, health, welfare, and safety of the people of the state.

History: En. Preamble, Ch. 84, L. 1937; Sec. 4-401, R.C.M. 1947; amd. and redes. 4-1-103 by Sec. 78, Ch. 387, L. 1975; R.C.M. 1947, 4-1-103; amd. Sec. 1, Ch. 5, L. 1979; amd. Sec. 12, Ch. 530, L. 1995.

Cross-References

Rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

16-1-104. Intent and construction of code. (1) The purpose and intent of this code are to:

(a) establish a state licensing system to control the transportation and importation of alcoholic beverages into Montana and the manufacture, sale, transportation, and distribution of alcoholic beverages within the state of Montana; and

(b) prohibit transactions in alcoholic beverages within the state of Montana except under state control as specifically provided by this code.

(2) Every section and provision of this code must be construed according to subsection (1).

History: En. Sec. 99, Ch. 105, L. 1933; re-en. Sec. 2815.159, R.C.M. 1935; Sec. 4-233, R.C.M. 1947; amd. and redes. 4-1-104 by Sec. 42, Ch. 387, L. 1975; R.C.M. 1947, 4-1-104; amd. Sec. 2, Ch. 68, L. 1987; amd. Sec. 2, Ch. 543, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 543 inserted (1)(a) concerning purpose of establishing licensing system; in (2) at end inserted "according to subsection (1)"; deleted former last sentence that read: "The provisions of this code dealing with the importation, sale, and disposition of alcoholic beverages within the state, through the instrumentality of a department and otherwise, provide the means by which such state control shall be made effective, and nothing in this code shall be construed as forbidding, affecting, or regulating any transaction which is not subject to the legislative authority of the state"; and made minor changes in style. Amendment effective May 1, 2001.

Cross-References

Statutory construction, Title 1, ch. 2.

16-1-105. Divisions of code. This code is divided into six chapters. Chapter 1 relates to the authority of the department of revenue to administer this code and the powers and functions of the department. Chapter 2 relates to the establishment of agency liquor stores and the keeping and selling of liquors. Chapter 3 relates to the control of liquor, wine, and beer. Chapter 4 relates to license administration. Chapter 5, now repealed, related to identification cards. Chapter 6 relates to enforcement.

History: En. Sec. 3, Ch. 105, L. 1933; re-en. Sec. 2815.62, R.C.M. 1935; Sec. 4-103, R.C.M. 1947; amd. and redes. 4-1-105 by Sec. 2, Ch. 387, L. 1975; R.C.M. 1947, 4-1-105; amd. Sec. 3, Ch. 68, L. 1987; amd. Sec. 53, Ch. 370, L. 1987; amd. Sec. 13, Ch. 530, L. 1995.

16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or retail price for off-premises consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(9) "Department" means the department of revenue, unless otherwise specified.

(10) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% alcohol by volume and not more than 6.9% alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

(11) "Immediate family" means a spouse, dependent children, or dependent parents.

(12) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(13) "Liquor" means an alcoholic beverage except beer and table wine.

(14) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

(15) "Package" means a container or receptacle used for holding an alcoholic beverage.

(16) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code.

(17) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(18) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(19) "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

(20) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

(21) "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

(22) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(23) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(24) "Table wine" means wine that contains not more than 16% alcohol by volume and includes cider.

(25) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

(26) "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(27) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine.

History: Ap.p. Sec. 110, Ch. 387, L. 1975; Sec. 4-1-107, R.C.M. 1947; Ap.p. Sec. 14, Ch. 84, L. 1937; Sec. 4-416, R.C.M. 1947; amd. and redes. 4-2-204 by Sec. 93, Ch. 387, L. 1975; amd. Sec. 3, Ch. 496, L. 1977; Sec. 4-2-204, R.C.M. 1947; R.C.M. 1947, 4-1-107, 4-2-204(part); amd. Sec. 2, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 2, Ch. 5, L. 1979; amd. Sec. 2, Ch. 699, L. 1979; amd. Sec. 1, Ch. 519, L. 1981; amd. Sec. 1, Ch. 595, L. 1983; amd. Sec. 1, Ch. 16, L. 1985; amd. Sec. 1, Ch. 19, L. 1985; amd. Sec. 1, Ch. 141, L. 1985; amd. Sec. 4, Ch. 68, L. 1987; amd. Sec. 8, Ch. 314, L. 1991; amd. Sec. 1, Ch. 228, L. 1993; amd. Sec. 1, Ch. 414, L. 1993; amd. Sec. 14, Ch. 530, L. 1995; amd. Sec. 86, Ch. 42, L. 1997; amd. Sec. 1, Ch. 399, L. 1997.

Cross-References

Alcohol distributor defined, 15-70-503.
Barrel defined, 30-12-101.
Definition of blood, breath, and urine alcohol concentration, 61-8-407.
Pull tabs and other detachable openings prohibited, 75-10-302.

Part 2
Scope of Code and Exemptions

16-1-201. Acts not covered by code. (1) Nothing in this code prevents any brewer, distiller, or other person, licensed under the provisions of any statute of the United States of

America for the manufacture of alcoholic beverages, from having or keeping alcoholic beverages in a place and in the manner authorized by or under any such statute.

(2) It is the policy of the state of Montana that the manufacture of alcoholic beverages, including the distillation, rectification, bottling, and processing as these terms are defined under the provisions of the laws of the United States, is authorized and permitted by any brewer, distiller, rectifier, or other person licensed under any provision of any statute of the United States of America in a place and in the manner authorized by or under any statute of the United States. The department may adopt rules that the department considers necessary with respect to the manufacture of alcoholic beverages. The rules may not be inconsistent with this code or with the statutes of the United States of America or regulations issued under the provisions of the Federal Alcohol Administration Act, 27 U.S.C. 201 through 212, inclusive, or regulations issued under the provisions of chapter 51 of the Internal Revenue Code.

(3) Nothing in this code prevents:

(a) the sale of liquor or table wine by any person to the department;

(b) the purchase, importation, and sale of liquor and table wine by the department for the purposes of and in accordance with this code.

History: En. Sec. 35, Ch. 105, L. 1933; re-en. Sec. 2815.94, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1965; Sec. 4-140, R.C.M. 1947; amd. and redes. 4-1-202 by Sec. 14, Ch. 387, L. 1975; R.C.M. 1947, 4-1-202; amd. Sec. 5, Ch. 68, L. 1987; amd. Sec. 87, Ch. 42, L. 1997.

Cross-References

Municipal regulation — location of distilleries, 7-21-4204.

16-1-202. Preparations not subject to code. (1) Subject to the provisions of this section, nothing in this code, by reason only that a preparation contains alcohol, prevents the manufacture, sale, purchase, or consumption of any:

(a) extract, essence, or tincture or other preparation containing alcohol that is prepared according to a formula of the United States Pharmacopoeia or according to a formula approved of by the department; or

(b) proprietary or patent medicine prepared according to a formula approved of by the department.

(2) The department, if of the opinion that any proprietary or patent medicine, extract, essence, tincture, or preparation that contains alcohol or any other preparation of a solid, semisolid, or liquid nature that contains alcohol can be used or that an extract from the substance can be used as a beverage or as the ingredient of a beverage, may prohibit the retail sale or the possession of the substance for retail sale within the state, except by an agency liquor store or by persons licensed by the department to keep and sell the substance by retail in accordance with this code and the regulations made under this code.

(3) The department shall notify the manufacturer or vendor of the proprietary or patent medicine, extract, essence, tincture, or preparation of the prohibition.

History: En. Sec. 36, Ch. 105, L. 1933; re-en. Sec. 2815.95, R.C.M. 1935; Sec. 4-141, R.C.M. 1947; amd. and redes. 4-1-203 by Sec. 15, Ch. 387, L. 1975; R.C.M. 1947, 4-1-203(part); amd. Sec. 88, Ch. 42, L. 1997.

Cross-References

Patent medicine prohibition, 16-6-308.

16-1-203. Health professions exemption. A physician, dentist, veterinarian, or pharmacist, acting within the scope of his professional responsibility and license to practice, who prescribes, prepares, or administers alcohol or substances containing alcohol and sells or charges a fee does not violate the prohibitions of this code.

History: En. 4-1-204 by Sec. 111, Ch. 387, L. 1975; R.C.M. 1947, 4-1-204.

Cross-References

Licensing and regulation of physicians, dentists, veterinarians, and pharmacists, Title 37, ch. 2 through 7, 18.

16-1-204. Licensed hospital or health care facility. Any person in charge of an institution regularly conducted as a licensed hospital or health care facility may administer alcoholic beverages purchased by him to any patient or inmate of the institution and may charge for the alcoholic beverages so administered.

History: En. Sec. 34, Ch. 105, L. 1933; re-en. Sec. 2815.93, R.C.M. 1935; amd. Sec. 9, Ch. 154, L. 1965; Sec. 4-139, R.C.M. 1947; amd. and redes. 4-1-205 by Sec. 13, Ch. 387, L. 1975; R.C.M. 1947, 4-1-205(part); amd. Sec. 6, Ch. 68, L. 1987.

Cross-References

Patient or inmate to be bona fide — penalty, 16-6-309.

Licensing and regulation of hospitals, Title 50, ch. 5.

Distribution to patients or inmates at state custodial institutions — misdemeanor, 53-1-103.

16-1-205. Local option. The electors of a county may, by approving an initiative as provided under 7-5-131 through 7-5-137, prohibit the sale and consumption of liquor or of all alcoholic beverages within the county. If such initiative is presented to the board of county commissioners, the board may not approve it but shall submit the proposal to the people under Title 7, chapter 5, part 1.

History: En. 4-1-206 by Sec. 112, Ch. 387, L. 1975; R.C.M. 1947, 4-1-206; amd. Sec. 392, Ch. 571, L. 1979; amd. Sec. 13, Ch. 20, L. 1985.

Part 3

Department of Revenue Powers, Duties, and Limitations

16-1-301. Administration of code. The department shall have the powers and duties to administer the Montana Alcoholic Beverage Code, including the general control, management, and supervision of all agency liquor stores.

History: En. Sec. 4, Ch. 105, L. 1933; re-en. Sec. 2815.63, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1937; amd. Sec. 1, Ch. 243, L. 1947; amd. Sec. 1, Ch. 140, L. 1949; amd. Sec. 1, Ch. 183, L. 1951; Sec. 4-107, R.C.M. 1947; amd. and redes. 4-1-301 by Sec. 3, Ch. 387, L. 1975; R.C.M. 1947, 4-1-301; amd. Sec. 15, Ch. 530, L. 1995.

Cross-References

City and county licenses — fees, 16-4-503.

16-1-302. Functions, powers, and duties of department. The department has the following functions, duties, and powers:

(1) to buy, import, have in its possession for sale, and sell liquors;

(2) to control the possession, sale, and delivery of liquors in accordance with the provisions of this code;

(3) to determine the municipalities where agency liquor stores are to be established throughout the state and the situation of the stores within these municipalities;

(4) to lease, furnish, and equip any building or land required to administer its duties under this code;

(5) to buy or lease plants and equipment necessary to administer its duties under this code;

(6) to employ the necessary employees required to administer this code and to dismiss them, assign them their title, and define their respective duties and powers and to contract with the department of justice for investigative services or to contract for the services of experts and persons engaged in the practice of a profession, if appropriate;

(7) to determine the nature, form, and capacity of all packages to be used for containing liquor kept or sold under this code;

(8) to grant and issue licenses under this code;

(9) to place special restrictions on the use of a particular license, which must be endorsed upon the face of the license, if the special restrictions are made pursuant to a hearing held in connection with the issuance of the license or if the special restrictions are agreed to by the licensee;

(10) without limiting or being limited by the foregoing, to do all things necessary to administer this code or rules.

History: En. Sec. 8, Ch. 105, L. 1933; re-en. Sec. 2815.67, R.C.M. 1935; amd. Sec. 3, Ch. 154, L. 1965; Sec. 4-112, R.C.M. 1947; amd. and redes. 4-1-302 by Sec. 5, Ch. 387, L. 1975; R.C.M. 1947, 4-1-302; amd. Sec. 6, Ch. 699, L. 1979; amd. Sec. 3, Ch. 156, L. 1991; amd. Sec. 2, Ch. 414, L. 1993; amd. Sec. 16, Ch. 530, L. 1995.

Cross-References

City and county licenses — fees, 16-4-503.

Pull tabs and other detachable openings prohibited, 75-10-302.

16-1-303. Department rules. (1) The department and the department of justice may make rules not inconsistent with this code necessary to efficiently administer this code.

(2) Rules made by the department may include but are not limited to the following:

(a) regulating the contractual operation of agency liquor stores and warehouses in which liquor is kept or sold and prescribing the books and records to be kept;

(b) prescribing the duties of department employees and regulating their conduct while in the discharge of their duties;

(c) governing the purchase of liquor and the furnishing of liquor to agency liquor stores;

(d) determining the classes, varieties, and brands of liquor to be available for distribution from the state liquor warehouse;

(e) prescribing the minimum hours during which agency liquor stores must be open for the sale of alcoholic beverages;

(f) providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each class, variety, or brand of liquor kept for sale;

(g) prescribing forms to be used for the purpose of this code or the rules and the terms and conditions for permits and licenses issued and granted under this code;

(h) prescribing the form of records of purchase of liquor and the reports to be made to the department and providing for inspection of the records;

(i) prescribing the manner of giving and serving notices required by this code or the rules;

(j) prescribing the fees payable for permits and licenses issued under this code for which fees are not prescribed in this code and prescribing the fees for anything done or permitted to be done under the rules;

(k) prescribing, subject to the provisions of this code, the conditions and qualifications necessary for the obtaining of alcoholic beverage licenses and the books and records to be kept and the returns to be made by the licensees;

(l) specifying and describing the place and the manner in which alcoholic beverages may be lawfully kept or stored;

(m) specifying and regulating the time when and the manner by which vendors and brewers may deliver alcoholic beverages under this code and the time when and the manner by which alcoholic beverages, under this code, may be lawfully conveyed or carried;

(n) governing the conduct, management, and equipment of any premises licensed to sell alcoholic beverages under this code;

(o) providing for the imposition and collection of taxes and making rules respecting returns, accounting, and payment of the taxes to the department.

(3) The department of justice may adopt rules to administer and implement its responsibilities under this title, including but not limited to rules providing for the inspection of licensed premises or premises where the sale of liquor has been proposed.

(4) Whenever this code provides that an act may be done if authorized by rules, the department, subject to the restrictions in subsection (1), may make rules respecting the act.

(5) The department shall use the negotiated rulemaking procedures contained in Title 2, chapter 5, for the purpose of adoption of rules related to the operation of agency liquor stores. However, the department may not be required to pay any expenses of the participants or of any persons engaged in the rulemaking process as provided for in 2-5-110.

History: En. Sec. 9, Ch. 105, L. 1933; re-en. Sec. 2815.68, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1965; amd. Sec. 1, Ch. 154, L. 1965; Sec. 4-113, R.C.M. 1947; amd. and redes. 4-1-303 by Sec. 6, Ch. 387, L. 1975; R.C.M. 1947, 4-1-303; amd. Sec. 7, Ch. 699, L. 1979; amd. Sec. 1, Ch. 47, L. 1983; amd. Sec. 7, Ch. 68, L. 1987; amd. Sec. 3, Ch. 414, L. 1993; amd. Sec. 17, Ch. 530, L. 1995.

Cross-References

Adoption and publication of administrative rules, 2-4-301.
Agency liquor store hours of operation, 16-2-104.
Liquor pricing, 16-2-201.
City and county licenses — fees, 16-4-503.

16-1-304. Prohibited acts. (1) An employee of the department involved in the operation of the state liquor warehouse, the issuance of licenses, or the collection of alcoholic beverages taxes or an employee of the department of justice directly involved with the investigation of matters concerning the manufacture, sale, and distribution of alcoholic beverages may not be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor, whether as owner, part owner, partner, member of syndicate, shareholder, agent, or employee for the employee's own benefit or in a fiduciary capacity for some other person.

(2) An employee of the state, a state agent, or any person having any ownership interest in an agency liquor store may not solicit or receive directly or indirectly any commission, remuneration, gift, or other thing tangible or intangible of value from any person or corporation selling or offering liquor for sale to the state pursuant to this code.

(3) A person selling or offering for sale to or purchasing liquor from the state may not directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any employee of the state, any state agent, or any person having any ownership interest in an agency liquor store or to anyone on behalf of an employee.

(4) The prohibition contained in subsection (3) does not prohibit the state from receiving samples of liquor for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor or any other person, firm, or corporation proposing to sell any liquor to the state of Montana shall submit, without cost to the state prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding 25 fluid ounces of the merchandise to the state.

(b) When a brand of liquor has been accepted for testing by the state, the state shall forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

(c) The state shall maintain written records of all samples received. The records must show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the state's action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) Liquor may not be withdrawn from the regular warehouse inventory or from the agency liquor stores for any purpose other than sale to persons who hold liquor licenses at the posted price and sale to the consumer at the retail price established by the agent or for destroying damaged or defective merchandise. The state shall maintain a written record including the type, brand, container size, number of bottles or other units, signatures of witnesses, and method of destruction or other disposition of damaged or defective warehouse merchandise.

(6) The state may not require a company that manufactured, distilled, rectified, bottled, or processed and sold less than 200,000 proof gallons of liquor nationwide in the previous calendar year to maintain minimum amounts of liquor in the state warehouse while the distiller retains ownership of the product.

History: En. Sec. 48, Ch. 105, L. 1933; re-en. Sec. 2815.107, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1965; amd. Sec. 1, Ch. 72, L. 1971; Sec. 4-153, R.C.M. 1947; amd. and redes. 4-1-304 by Sec. 18, Ch. 387, L. 1975; amd. Sec. 1, Ch. 496, L. 1977; R.C.M. 1947, 4-1-304; amd. Sec. 8, Ch. 699, L. 1979; amd. Sec. 1, Ch. 766, L. 1991; amd. Sec. 4, Ch. 414, L. 1993; amd. Sec. 18, Ch. 530, L. 1995.

Cross-References

Government employee standards of conduct, Title 2, ch. 2, parts 1 and 2.

Prohibited gifts to public servants, 45-7-104.

16-1-305. Title to property and moneys — administrative expenses. All property, whether real or personal, all moneys acquired, administered, possessed, or received by the department, and all profits earned in the administration of this code shall be the property of the state. All expenses, debts, and liabilities incurred by the department in connection with the administration of this code shall be paid by the department from the moneys received by the department under such administration.

History: En. Sec. 91, Ch. 105, L. 1933; re-en. Sec. 2815.151, R.C.M. 1935; Sec. 4-226, R.C.M. 1947; amd. and redes. 4-1-306 by Sec. 40, Ch. 387, L. 1975; R.C.M. 1947, 4-1-306.

16-1-306. Revenue to be paid to state treasurer. Except as provided in 16-1-404, 16-1-405, 16-1-406, and 16-1-411, all fees, charges, taxes, and revenue collected by or under authority of the department must, in accordance with the provisions of 15-1-501, be deposited to the credit of the state general fund.

History: En. Sec. 49, Ch. 106, L. 1933; amd. Sec. 17, Ch. 46, Ex. L. 1933; amd. Sec. 20B, Ch. 109, L. 1935; re-en. Sec. 2815.50, R.C.M. 1935; amd. Sec. 9, Ch. 14, L. 1941; amd. Sec. 1, Ch. 121, L. 1949; amd. Sec. 20, Ch. 249, L. 1967; amd. Sec. 3, Ch. 296, L. 1969; amd. Sec. 3, Ch. 421, L. 1971; Sec. 4-347, R.C.M. 1947; amd. and redes. 4-1-407 by Sec. 72, Ch. 387, L. 1975; amd. Sec. 1, Ch. 286, L. 1977; R.C.M. 1947, 4-1-407; amd. Sec. 54, Ch. 370, L. 1987; amd. Sec. 20, Ch. 455, L. 1993; amd. Sec. 23, Ch. 18, L. 1995; amd. Sec. 13, Ch. 422, L. 1997.

Part 4
Taxation of Alcoholic Beverages

Part Cross-References

Resort tax, Title 7, ch. 6, part 15.

16-1-401. Liquor excise tax. (1) The department shall collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at the rate of:

(a) 16% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 13.8% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The department shall retain the amount of the excise tax received in a separate account and shall, in accordance with the provisions of 15-1-501, deposit, to the credit of the general fund, the amount collected and received not later than the 10th day of each month.

History: En. Sec. 15, Ch. 84, L. 1937; amd. Sec. 1, Ch. 41, L. 1939; amd. Sec. 1, Ch. 180, L. 1957; Approved at referendum, Nov. 4, 1958; Sec. 4-417, R.C.M. 1947; amd. and redes. 4-1-403 by Sec. 94, Ch. 387, L. 1975; R.C.M. 1947, 4-1-403; amd. Sec. 1, Ch. 690, L. 1985; amd. Sec. 21, Ch. 455, L. 1993; amd. Sec. 24, Ch. 18, L. 1995.

16-1-402. Payment of excise tax by carriers. (1) Every airline or railroad operating in the state of Montana and selling liquor purchased outside this state for consumption within this state shall pay to the department the excise taxes and state markup that would be applicable to the liquor if purchased from an agency liquor store.

(2) The amount of excise taxes and state markup payable must be determined by multiplying the following factors:

(a) the average liquor used per departure;

(b) the number of departures from Montana on which liquor is served;

(c) the ratio of Montana revenue passenger miles to system revenue passenger miles; and

(d) the applicable excise tax and state markup rates.

(3) From the product, the carrier shall subtract the amount of excise taxes and state markup on purchases of liquor made within this state.

History: En. 4-4-110 by Sec. 115, Ch. 387, L. 1975; R.C.M. 1947, 4-4-110; amd. Sec. 19, Ch. 530, L. 1995.

16-1-403. Excise tax accounting methods — report forms — penalty and interest. (1) Any carrier aggrieved by the application of the method provided in 16-1-402 may petition the department for use of an alternate method. If the department finds that the application of the method will be unjust to the carrier, it may allow the use of the method petitioned for by the carrier or may use another method that fairly reflects the liquor purchased outside this state and served for consumption within this state.

(2) (a) The department shall prescribe report forms that must be used by the carriers in reporting their sales and computing their liability for excise taxes and markup. Report forms must be filed and payment of excise taxes and state markup must be made on a quarterly basis. The filing of report forms and payment of excise taxes and state markup must be made not later than the last day of the month immediately following the close of each quarterly period.

(b) A person who fails to file a required report form or to pay the excise taxes or state markup due under this part is subject to the penalty and interest provisions of 15-1-216.

History: En. 4-4-111 by Sec. 116, Ch. 387, L. 1975; R.C.M. 1947, 4-4-111; amd. Sec. 3, Ch. 5, L. 1979; amd. Sec. 47, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

16-1-404. License tax on liquor — amount — distribution of proceeds. (1) The department shall collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of:

(a) 10% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 8.6% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The license tax must be charged and collected on all liquor brought into the state and taxed by the department. The retail selling price must be computed by adding to the cost of the liquor the state markup as designated by the department. The license tax must be figured in the same manner as the state excise tax and is in addition to the state excise tax. The department shall retain in a separate account the amount of the license tax received. The department, in accordance with the provisions of 15-1-501, shall allocate the revenue as follows:

(a) Thirty-four and one-half percent is allocated to the state general fund.

(b) Sixty-five and one-half percent must be deposited in the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

(3) The license tax proceeds that are allocated to the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency must be credited quarterly to the department of public health and human services. The legislature may appropriate a portion of the license tax proceeds to support alcohol and chemical dependency programs. The remainder must be distributed as provided in 53-24-206.

History: En. Sec. 1, Ch. 217, L. 1957; amd. Sec. 1, Ch. 153, L. 1969; amd. Sec. 17, Ch. 302, L. 1974; Sec. 4-240, R.C.M. 1947; amd. and redes. 4-1-401 by Sec. 44, Ch. 387, L. 1975; amd. Sec. 8, Ch. 414, L. 1977; R.C.M. 1947, 4-1-401; amd. Sec. 6, Ch. 711, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 690, L. 1985; amd. Sec. 13, Ch. 703, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 22, Ch. 455, L. 1993; amd. Sec. 25, Ch. 18, L. 1995; amd. Sec. 51, Ch. 546, L. 1995; amd. Sec. 14, Ch. 422, L. 1997; amd. Sec. 9, Ch. 389, L. 1999; amd. Sec. 1, Ch. 470, L. 2001; amd. Sec. 104, Ch. 574, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 470 in (2)(b) at end and in (3) in two places inserted "and chemical dependency". Amendment effective April 30, 2001.

Chapter 574 substituted (2)(a) allocating 34.5% to state general fund for former (2)(a) and (2)(b) that read: "(a) Thirty percent is allocated to the counties according to the amount of liquor purchased in each county to be distributed to the incorporated cities and towns, as provided in subsection (4).

(b) Four and one-half percent is allocated to the counties according to the amount of liquor purchased in each county, and this money may be used for county purposes"; deleted former (3) and (4) that read: "(3) (a) In the case of purchases of liquor by a retail liquor licensee for use in the licensee's business, the department shall make regulations necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in 16-1-405.

(b) The department shall pay quarterly to each county treasurer the proportion of the license tax due each county, in accordance with the provisions of 15-1-501, to be allocated to the incorporated cities and towns of the county. The payments to counties under this section are statutorily appropriated, as provided in 17-7-502.

(4) The license tax proceeds allocated to the county under subsection (2) for use by cities and towns must be distributed by the county treasurer to the incorporated cities and towns within 30 days of receipt from the department. The distribution of funds to the cities and towns must be based on the proportion that the gross sale of liquor in each city or town is to the gross sale of liquor in all of the cities and towns of the county"; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Utilization of tax proceeds used for alcoholism programs, 53-24-108.

16-1-405. Use of license tax proceeds. The license tax moneys when so apportioned shall be deposited to the credit of the general funds of said incorporated cities, towns, and counties and shall be expended by said incorporated cities, towns, and counties for law enforcement and the regulation and control of the sale of alcoholic beverages and the use thereof.

History: En. Sec. 2, Ch. 217, L. 1957; Sec. 4-241, R.C.M. 1947; redes. 4-1-402 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-1-402; amd. Sec. 8, Ch. 68, L. 1987.

16-1-406. Taxes on beer. (1) (a) A tax is imposed on each barrel of 31 gallons of beer sold in Montana by a wholesaler. A barrel of beer equals 31 gallons. The tax is based upon the total number of barrels of beer produced by a brewer in a year. A brewer who produces less than 20,000 barrels of beer a year is taxed on the following increments of production:

(i) up to 5,000 barrels, $1.30;

(ii) 5,001 barrels to 10,000 barrels, $2.30; and

(iii) 10,001 barrels to 20,000 barrels, $3.30.

(b) The tax on beer sold for a brewer who produces over 20,000 barrels is $4.30.

(2) The tax imposed pursuant to subsection (1) is due at the end of each month from the wholesaler upon beer sold by the wholesaler during that month. The department shall compute the tax due on beer sold in containers other than barrels or in barrels of more or less capacity than 31 gallons.

(3) Each quarter, in accordance with the provisions of 15-1-501, of the tax collected pursuant to subsection (1), an amount equal to:

(a) 23.26% must be deposited in the state treasury to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency; and

(b) the balance must be deposited in the state general fund.

History: En. Sec. 20, Ch. 106, L. 1933; amd. Sec. 8, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.29, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1959; amd. Sec. 2, Ch. 296, L. 1969; amd. Sec. 2, Ch. 421, L. 1971; amd. Sec. 18, Ch. 302, L. 1974; Sec. 4-324, R.C.M. 1947; redes. 4-1-404 by Sec. 120, Ch. 387, L. 1975; amd. Sec. 9, Ch. 414, L. 1977; R.C.M. 1947, 4-1-404(part); amd. Sec. 1, Ch. 172, L. 1987; amd. Sec. 15, Ch. 422, L. 1997; amd. Sec. 1, Ch. 405, L. 2001; amd. Sec. 2, Ch. 470, L. 2001; amd. Secs. 105, 255(7), Ch. 574, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section — Coordination: Chapter 405 in (1)(a) substituted first and second sentences regarding wholesale beer tax and number of gallons in barrel for "A tax of $4.30 per barrel of 31 gallons is imposed on each barrel of beer sold in Montana by a wholesaler" and inserted third sentence regarding basis for tax, introductory clause, and (1)(a)(i) through (1)(a)(iii) specifying amount of tax per number of barrels; inserted (1)(b) regarding tax on brewer producing more than 20,000 barrels; in (3)(a) at beginning substituted "23.26%" for $1"; in (3)(b) at beginning substituted 111.63%" for "50 cents"; in (3)(c) at beginning substituted "65.11%" for "$2.80"; and made minor changes in style. Amendment effective July 1, 2001. Pursuant to sec. 255(7), Ch. 574, L. 2001, a coordination section, the code commissioner has not codified the amendments made by Ch. 405.

Chapter 470 in (3)(a) at end inserted "and chemical dependency". Amendment effective April 30, 2001.

Section 255(7), Ch. 574, L. 2001, a coordination section, provided that if Senate Bill No. 317 and Ch. 574 were both passed and approved, then 16-1-406 was amended as provided in the coordination section. Senate Bill No. 317 was passed and approved as Ch. 405, L. 2001. Chapter 574 in (1)(a) at beginning substituted "A tax" for "A tax of $4.30" and inserted remainder of subsection specifying that a barrel of beer equals 31 gallons, imposing tax based on total barrels of beer produced in a year, and establishing schedule of tax for production of less than 20,000 barrels of beer a year; inserted (1)(b) setting tax at $4.30 for brewers producing over 20,000 barrels a year; in (2) at beginning after "tax" inserted "imposed pursuant to subsection (1)"; in (3)(a) at beginning substituted "23.26%" for "$1"; in (2)(b) at beginning substituted "the balance" for "50 cents"; deleted former (2)(c) that read: "(c) $2.80 must be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund"; deleted former (3) that read: "(3) (a) The money in the incorporated cities and towns beer tax account is statutorily appropriated, as provided in 17-7-502, to the department, which shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census. For cities and towns incorporated after the latest official federal census, the census must be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it may not receive any funds under this section and the amount previously distributed to the city or town must be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section must be expended for state purposes, such as law enforcement, maintenance of the transportation system, and public health.

(b) The department may adjust population estimates only on the July 1 following the date of publication of the estimates by the U.S. bureau of the census. The adjusted distribution formula must remain in effect for the entire fiscal year"; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 4, Ch. 405, L. 2001, provided: "[This act] applies to beer sold by a wholesaler on or after July 1, 2001."

16-1-407. Repealed. Sec. 3, Ch. 172, L. 1987.

History: En. 4-1-405 by Sec. 113, Ch. 387, L. 1975; R.C.M. 1947, 4-1-405.

16-1-408. Repealed. Sec. 66, Ch. 422, L. 1997.

History: En. Sec. 20, Ch. 106, L. 1933; amd. Sec. 8, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.29, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1959; amd. Sec. 2, Ch. 296, L. 1969; amd. Sec. 2, Ch. 421, L. 1971; amd. Sec. 18, Ch. 302, L. 1974; Sec. 4-324, R.C.M. 1947; redes. 4-1-404 by Sec. 120, Ch. 387, L. 1975; amd. Sec. 9, Ch. 414, L. 1977; R.C.M. 1947, 4-1-404(part); amd. Sec. 1, Ch. 721, L. 1985; amd. Sec. 2, Ch. 172, L. 1987; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 23, Ch. 455, L. 1993; amd. Sec. 26, Ch. 18, L. 1995; amd. Sec. 52, Ch. 546, L. 1995.

16-1-409. Failure to make beer tax returns — penalties and interest. (1) If a brewer or wholesaler subject to the payment of the tax provided for in 16-1-406 fails to make any return required by this code or fails to make payment of the tax within the time provided in this part, the department shall, after the time has expired, determine and fix the amount of tax due the state from the delinquent brewer or wholesaler.

(2) The department shall then proceed to collect the tax with penalties and interest. Upon request of the department, the attorney general shall prosecute in any court of competent jurisdiction an action to collect the tax.

(3) If all or part of the tax imposed upon a brewer or wholesaler by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded after the warrant is issued.

(4) An action may not be maintained to enjoin the collection of the tax or any part of the tax.

(5) Any tax owed by a brewer or wholesaler under this code not paid within the time provided is delinquent, and penalty and interest must be added to the delinquent tax as provided in 15-1-216.

(6) A brewer or wholesaler who fails, neglects, or refuses to make the return to the department provided for in 16-3-211 or 16-3-231 or refuses to allow the examination as provided for in 16-3-211 or 16-3-231 or fails to make an accurate return according to the manner prescribed is guilty of a misdemeanor and upon conviction shall be fined in an amount not exceeding $1,000.

History: (1) thru (6)En. Sec. 3, Ch. 220, L. 1939; Sec. 4-325, R.C.M. 1947; amd. and redes. 4-3-217 by Sec. 60, Ch. 387, L. 1975; Sec. 4-3-217, R.C.M. 1947; (7)En. Sec. 16, Ch. 106, L. 1933; re-en. Sec. 2815.25, R.C.M. 1935; amd. Sec. 2, Ch. 220, L. 1939; Sec. 4-320, R.C.M. 1947; amd. and redes. 4-6-403 by Sec. 58, Ch. 387, L. 1975; Sec. 4-6-403, R.C.M. 1947; R.C.M. 1947, 4-3-217, 4-6-403; amd. Sec. 40, Ch. 439, L. 1981; amd. Sec. 19, Ch. 83, L. 1989; amd. Sec. 16, Ch. 422, L. 1997; amd. Sec. 48, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

16-1-410. Repealed. Sec. 66, Ch. 422, L. 1997.

History: En. 4-347.1 by Sec. 4, Ch. 421, L. 1971; Sec. 4-347.1, R.C.M. 1947; amd. and redes. 4-1-408 by Sec. 73, Ch. 387, L. 1975; R.C.M. 1947, 4-1-408; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 14, Ch. 703, L. 1985; amd. Sec. 20, Ch. 83, L. 1989; amd. Sec. 23, Ch. 15, Sp. L. July 1992; amd. Sec. 1, Ch. 60, L. 1993; amd. Sec. 24, Ch. 455, L. 1993; amd. Sec. 27, Ch. 18, L. 1995.

16-1-411. Tax on wine and hard cider — penalty and interest. (1) (a) A tax of 27 cents per liter is imposed on table wine, except hard cider, imported by a table wine distributor or the department.

(b) A tax of 3.7 cents per liter is imposed on hard cider imported by a table wine distributor or the department.

(2) The tax imposed in subsection (1) must be paid by the table wine distributor by the 15th day of the month following sale of the table wine or hard cider from the table wine distributor's warehouse. Failure to file a tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 15-1-216.

(3) The tax paid by a table wine distributor in accordance with subsection (2) must, in accordance with the provisions of 15-1-501, be distributed as follows:

(a) 69% to the state general fund; and

(b) 31% to the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

(4) The tax computed and paid in accordance with this section is the only tax imposed by the state or any of its subdivisions, including cities and towns.

(5) For purposes of this section, "table wine" has the meaning assigned in 16-1-106, but does not include hard cider.

History: En. Sec. 9, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 5, Ch. 699, L. 1979; amd. Sec. 1, Ch. 219, L. 1981; amd. Sec. 1, Ch. 241, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 15, Ch. 703, L. 1985; amd. Sec. 2, Ch. 721, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 24, Ch. 15, Sp. L. July 1992; amd. Sec. 2, Ch. 60, L.

1993; amd. Sec. 25, Ch. 455, L. 1993; amd. Sec. 28, Ch. 18, L. 1995; amd. Sec. 53, Ch. 546, L. 1995; amd. Sec. 2, Ch. 399, L. 1997; amd. Sec. 49, Ch. 427, L. 1999; amd. Sec. 3, Ch. 470, L. 2001; amd. Sec. 106, Ch. 574, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 470 in (3)(b) at end inserted "and chemical dependency". Amendment effective April 30, 2001.

Chapter 574 in (3)(a) at beginning substituted "69%" for "59%"; deleted former (3)(c) and (3)(d) that read: "(c) 5% is statutorily appropriated, as provided in 17-7-502, to the department for allocation to the counties, based on population, for the purpose established in 16-1-404; and

(d) 5% is statutorily appropriated, as provided in 17-7-502, to the department for allocation to the cities and towns, based on population, for the purpose established in 16-1-405"; in (5) deleted definition of based on population that read: ""Based on population" means:

(i) for counties, the direct proportion that the population of each county bears to the total population of all counties as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census as provided in 16-1-406; and

(ii) for cities, the distribution described in 16-1-406"; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

Hard cider defined, 16-1-106.

Additional tax on table wine sold to agency liquor store, 16-2-301.

16-1-412 through 16-1-420 reserved.

16-1-421. Terminated. Sec. 39, Ch. 15, Sp. L. July 1992.

History: En. Sec. 20, Ch. 15, Sp. L. July 1992; amd. Sec. 26, Ch. 455, L. 1993.

16-1-422. Terminated. Sec. 39, Ch. 15, Sp. L. July 1992.

History: En. Sec. 21, Ch. 15, Sp. L. July 1992; amd. Sec. 27, Ch. 455, L. 1993.

16-1-423. Terminated. Sec. 39, Ch. 15, Sp. L. July 1992.

History: En. Sec. 22, Ch. 15, Sp. L. July 1992; amd. Sec. 28, Ch. 455, L. 1993.

CHAPTER 2

LIQUOR STORES

Part 1 — Operation of Stores

16-2-101. Establishment and closure of agency liquor stores — agency franchise agreement — kinds and prices of liquor.
16-2-102. Repealed.
16-2-103. Duplicate invoices of sales required.
16-2-104. Hours.
16-2-105. Place and time of selling liquor.
16-2-106. Purchase price in advance.
16-2-107. No open alcoholic beverage container or alcoholic beverage consumption on premises of agency store.
16-2-108. Disposition of money received.
16-2-109. Number and location of agency liquor stores.
16-2-110. State lien on liquor in agency liquor stores.

Part 2 — Price of Liquor

16-2-201. Reduction for quantity sales of liquor.
16-2-202. Repealed.
16-2-203. Department sales to licensees.

Part 3 — Sale of Table Wine

16-2-301. Retail selling price on table wine — tax on certain table wine.
16-2-302. Repealed.
16-2-303. Repealed.

Part 4 — Conversion of Liquor Stores (Repealed)

16-2-401 through 16-2-406. Repealed.
16-2-407. Repealed.
16-2-408. Repealed.

Part 1
Operation of Stores

16-2-101. Establishment and closure of agency liquor stores — agency franchise agreement — kinds and prices of liquor. (1) The department shall enter into agency franchise agreements to operate agency liquor stores as the department finds feasible for the wholesale and retail sale of liquor.

(2) (a) The department may from time to time fix the posted prices at which the various classes, varieties, and brands of liquor may be sold, and the posted prices must be the same at all agency liquor stores.

(b) (i) The department shall supply from the state liquor warehouse to agency liquor stores the various classes, varieties, and brands of liquor for resale at the state posted price to persons who hold liquor licenses and to all other persons at the retail price established by the agent.

(ii) (A) According to the ordering and delivery schedule set by the department, an agency liquor store may place a liquor order with the department at its state liquor warehouse in the manner to be established by the department.

(B) The agency liquor store's purchase price is the department's posted price less the agency liquor store's commission rate and less the agency liquor store's weighed average discount ratio. For purposes of this subsection (2)(b)(ii)(B), for agency liquor stores or employee-operated state liquor stores that were operating on June 30, 1994, the weighted average discount ratio is the ratio between an agency liquor store's or the employee-operated state liquor store's full case discount sales divided by the agency liquor store's or employee-operated state liquor store's gross sales, based on fiscal year 1994 reported sales, times the state discount rate for case lot sales, as provided in 16-2-201, divided by the state discount rate for full case lot sales in effect on June 30, 1994. For all other stores that are placed in service after June 30, 1994, the weighted average discount ratio is the average ratio in fiscal year 1994 for similar sized stores for 1 year of operation. The weighted discount ratio must be computed on the store's first 12 months of operation.

(C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid for within 60 days of the date on which the department invoices the liquor to the agency liquor store.

(c) An agency liquor store may sell table wine at retail for off-premises consumption.

(3) Agency liquor stores may not be located in or adjacent to grocery stores in communities with populations over 3,000.

(4) Agency liquor stores must receive commissions payable as follows:

(a) (i) a 10% commission for agencies in communities with less than 3,000 in population, unless adjusted pursuant to subsection (6); or

(ii) a commission established by competitive bidding unless adjusted pursuant to subsection (6) for agencies in communities with 3,000 or more in population; plus

(b) for agency liquor stores operating under a renewed franchise agreement or that have been operated for at least 3 years under an original franchise agreement, a percentage based upon the total annual dollar volume of sales in the previous fiscal year, as follows:

(i) for agency liquor stores with a volume of sales of $500,000 or more, 0.125% beginning July 1, 2002, 0.5% beginning July 1, 2003, and 0.875% beginning July 1, 2004;

(ii) for agency liquor stores with a volume of sales of less than $500,000, 1.25% beginning July 1, 2002, 1.25% beginning July 1, 2003, and 1.5% beginning July 1, 2004; or

(iii) for a city with more than one agency liquor store, in lieu of the addition to a commission increase provided in subsection (4)(b)(i) or (4)(b)(ii), for each store in the city, an addition to its commission rate equal to the increase granted the store with the lowest commission rate.

(5) An agency franchise agreement must:

(a) be effective for a 10-year period and must be renewed at the existing commission rate for additional 10-year periods if the requirements of the agency franchise agreement have been satisfactorily performed;

(b) require the agent to maintain comprehensive general liability insurance and liquor liability insurance throughout the term of the agency franchise agreement in an amount established by the department of administration. The insurance policy must:

(i) declare the department as an additional insured; and

(ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising from or in connection with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement.

(c) provide that upon termination by the department for cause or upon mutual termination, the agent is liable for any outstanding liquor purchase invoices. If payment is not made within the appropriate time, the department may immediately repossess all liquor inventory, wherever located.

(d) specify the reasonable service and space requirements that the agent will provide throughout the term of the agency franchise agreement.

(6) (a) The commission percentage that the department pays the agent under subsection (4)(a) may be reviewed on July 1, 1998, and every succeeding 3 years at the request of either party. If the agent concurs, the department may adjust the commission percentage to be paid during the remaining term of the agency franchise agreement or until the next time the commission percentage is reviewed, if that is sooner than the term of the agency franchise agreement, to a commission percentage that is equal to the average commission percentage being paid agents with similar sales volumes if:

(i) the agent's commission percentage is less than the average; and

(ii) all the requirements of the agency franchise agreement have been satisfactorily performed.

(b) The adjusted commission percentage determined under subsection (6)(a) may be greater than the average commission paid agents with similar sales volume:

(i) if the agent demonstrates that:

(A) the agent has experienced cost increases that are beyond the agent's control, including but not limited to increases in the federally established minimum wage or escalation in prevailing rent; and

(B) the average commission percentage is insufficient to yield net income commensurate with net income experienced before the cost increases occurred; and

(ii) if the department demonstrates that it is unable to indicate adjustments in the requirements specified in the agent's franchise agreement that will eliminate the impact of cost increases.

(7) The liability insurance requirement may be reviewed every 3 years after July 1, 1995, at the request of either the agent or the department. If the agent concurs, the department may adjust the requirements to be effective during the remaining term of the agency franchise agreement if the adjustments adequately protect the state from risks associated with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement. The amount of liability insurance coverage may not be less than the minimum requirements of the department of administration.

(8) (a) The department may terminate an agency franchise agreement if the agent has not satisfactorily performed the requirements of the agency franchise agreement because the agent:

(i) charges retail prices that are less than the department's posted price for liquor, sells liquor to persons who hold liquor licenses at less than the posted price, or sells liquor at case discounts greater than the discount provided for in 16-2-201 to persons who hold liquor licenses;

(ii) fails to maintain sufficient liability insurance;

(iii) has not maintained a quantity and variety of product available for sale commensurate with demand, delivery cycle, repayment schedule, mixed case shipments from the department, and the ability to purchase special orders;

(iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has operated the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the purpose of making purchases of liquor; or

(v) fails to comply with the express terms of the agency franchise agreement.

(b) The department shall give an agent 30 days' notice of its intent to terminate the agency franchise agreement for cause and specify the unmet requirements. The agent may contest the termination and request a hearing within 30 days of the date of notice. If a hearing is requested, the department shall suspend its termination order until after a final decision has been made pursuant to the Montana Administrative Procedure Act.

(c) In the case of failure to make timely payments to the department for liquor purchased, the department may terminate the agency franchise agreement and immediately repossess any liquor purchased and in the possession of the agent. If an agency franchise agreement is terminated, the agent may contest the termination and request a hearing within 30 days of the department's repossession of the liquor. The agency liquor store shall remain closed until a final decision has been reached following a hearing held pursuant to the Montana Administrative Procedure Act.

(9) An agency franchise agreement may be terminated upon mutual agreement by the agent and the department.

(10) An agent may assign an agency franchise agreement to a person who, upon approval of the department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the department of an intent to assign the agency franchise agreement 60 days before the intended effective date of the assignment. The department may not unreasonably withhold approval of an assignment request.

(11) A person or entity may not hold an ownership interest in more than one agency liquor store.

(12) The department shall maintain sufficient inventory in the state warehouse in order to meet a monthly service level of at least 97%.

History: En. Sec. 10, Ch. 105, L. 1933; re-en. Sec. 2815.69, R.C.M. 1935; amd. Sec. 4, Ch. 30, L. 1937; amd. Sec. 1, Ch. 237, L. 1947; amd. Sec. 1, Ch. 162, L. 1949; amd. Sec. 1, Ch. 62, L. 1971; Sec. 4-114, R.C.M. 1947; amd. and redes. 4-2-101 by Sec. 7, Ch. 387, L. 1975; R.C.M. 1947, 4-2-101(part); amd. Sec. 1, Ch. 157, L. 1979; amd. Sec. 1, Ch. 2, Sp. L. March 1986; amd. Sec. 9, Ch. 68, L. 1987; amd. Sec. 1, Ch. 648, L. 1987; amd. Sec. 2, Ch. 228, L. 1993; amd. Sec. 20, Ch. 530, L. 1995; amd. Sec. 89, Ch. 42, L. 1997; amd. Sec. 1, Ch. 508, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 508 in (2)(b)(ii)(B) near middle of first sentence after "commission rate" deleted "in the state agency franchise agreement"; in (4)(a)(i) at end substituted "subsection (6)" for "subsection (6) or (8)"; in (4)(a)(ii) near middle substituted "subsection (6)" for "subsection (6) or (8)" and at end inserted "plus"; inserted (4)(b) increasing commission rates for state agency liquor stores based on annual sales volumes of stores; in (5)(a) substituted "and must be renewed at the existing commission rate for additional 10-year periods" for "and may be renewed every 10 years"; in (6)(a) substituted "under subsection (4)(a)" for "under an agency franchise agreement"; deleted former (8) that read: "(8) (a) Except as provided in subsection (8)(b), an agency franchise agreement must be renewed for additional 10-year periods if the agent has satisfactorily performed all the requirements of the agency franchise agreement. Except for establishing the new term and except for a commission percentage that may be negotiated as provided in subsection (8)(b), changes in the agency franchise agreement as a result of a renewal may not be made unless the agent and the department mutually agree.

(b) If at least 90 days prior to the expiration of a 10-year agency franchise agreement, the department determines that an adjustment of the commission percentage paid to the agent is in the best interests of the state, the department shall notify the agent of that determination.

(c) If the agent does not concur with the department's commission percentage adjustment, the department shall advertise for bids for the agency franchise at the adjusted commission percentage, subject to the provisions of this chapter. If bids from persons who meet the criteria provided in this chapter are received by the department for the agency franchise at the adjusted commission percentage, the agent under the existing franchise agreement has a preference right to renew the franchise agreement by concurring in the adjusted commission percentage.

(d) If the agent under the existing franchise agreement declines to exercise the preference right under subsection (8)(c), the department shall enter into an agency franchise agreement as provided in this chapter with a person who accepted the adjusted commission percentage.

(e) If the agent exercises the preference right and believes the adjusted commission percentage to be inadequate or not in the best interests of the state, the agent may request an administrative hearing. The request must contain a statement of reasons why the agent believes the commission percentage to be inadequate or not in the state's best interests. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the adjusted commission percentage is inadequate or not in the state's best interests. The department may, after the hearing, adjust the commission percentage if the agent shows that the commission percentage is inadequate or not in the best interests of the state. If the department increases the commission percentage rate, the department shall set forth its findings and conclusions in writing and inform the agent and the other persons who offered to enter into an agency agreement at the adjusted commission rate"; and made minor changes in style. Amendment effective May 1, 2001.

Applicability: Section 3, Ch. 508, L. 2001, provided: "[This act] applies to commissions beginning in calendar year 2002."

Cross-References

Contested case hearings — Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

Price of liquor, 16-2-201, 16-2-203.

16-2-102. Repealed. Sec. 4, Ch. 47, L. 1983.

History: En. Sec. 14, Ch. 105, L. 1933; re-en. Sec. 2815.73, R.C.M. 1935; Sec. 4-119, R.C.M. 1947; redes. 4-2-102 by Sec. 120, Ch. 387, L. 1975; amd. Sec. 2, Ch. 496, L. 1977; R.C.M. 1947, 4-2-102.

16-2-103. Duplicate invoices of sales required. (1) An agency liquor store shall, upon each sale of liquor or table wine to any licensee, issue a duplicate invoice of the liquor or table wine purchased, as provided by the department, a copy of which must be delivered to the licensee and one copy retained at the store.

(2) The invoice must show the date of purchase, the name of the employee making the sale, the quantity of each kind of liquor or table wine purchased, the price paid for the liquor or table wine, the name of the licensee, and the number of the license, with any other information that may be required by the department.

(3) The licensee shall keep and retain the duplicate invoice of all purchases made from an agency liquor store, which must at all times be subject to inspection by the duly authorized officers, agents, and employees of the department.

History: En. Sec. 16, Ch. 84, L. 1937; Sec. 4-418, R.C.M. 1947; amd. and redes. 4-2-205 by Sec. 95, Ch. 387, L. 1975; R.C.M. 1947, 4-2-205; amd. Sec. 10, Ch. 68, L. 1987; amd. Sec. 90, Ch. 42, L. 1997.

16-2-104. Hours. (1) Agency liquor stores may remain open during the period between 8 a.m. and 2 a.m. The stores must be closed for the transaction of business on legal holidays and between the close of normal business Saturday afternoon up to the opening of normal business Tuesday morning.

(2) (a) An agency liquor store may be open on Mondays that are not legal holidays if 51% of the all-beverages licensees within the agency liquor store's immediate market area sign a petition agreeing that agency liquor stores located within the immediate market area may be open on Mondays. The petition must be on a form prescribed by the department. The department shall verify the validity of the signatures on the petition. If the department determines that the petition contains sufficient valid signatures, all agency liquor stores within the designated market area must be allowed to transact business on Mondays that are not legal holidays. To determine the number of signatures needed, the department shall round up to the nearest whole number any fractional number of all-beverages licensees.

(b) For the purposes of subsection (2)(a), immediate market area means:

(i) the city limits for stores located in incorporated cities or towns; and

(ii) the area contained within a 5-mile radius from a store or stores located in unincorporated cities or towns or in a consolidated local government.

History: (1)En. Sec. 10, Ch. 105, L. 1933; re-en. Sec. 2815.69, R.C.M. 1935; amd. Sec. 4, Ch. 30, L. 1937; amd. Sec. 1, Ch. 237, L. 1947; amd. Sec. 1, Ch. 162, L. 1949; amd. Sec. 1, Ch. 62, L. 1971; Sec. 4-114, R.C.M. 1947; amd. and redes. 4-2-101 by Sec. 7, Ch. 387, L. 1975; Sec. 4-2-101, R.C.M. 1947; (2)En. Sec. 16, Ch. 105, L. 1933; re-en. Sec. 2815.75, R.C.M. 1935; amd. Sec. 5, Ch. 30, L. 1937; amd. Sec. 2, Ch. 62, L. 1971; Sec. 4-121, R.C.M. 1947; amd. and redes. 4-2-104 by Sec. 11, Ch. 387, L. 1975; Sec. 4-2-104, R.C.M. 1947; R.C.M. 1947, 4-2-101(part), 4-2-104; amd. Sec. 11, Ch. 68, L. 1987; amd. Sec. 21, Ch. 530, L. 1995.

Cross-References

Legal holidays in Montana, 1-1-216.

16-2-105. Place and time of selling liquor. A liquor store agent and a person acting as an employee of or in any capacity for any agent may not sell liquor in any other place or at any other time or otherwise than as authorized by this code and the rules implementing this code.

History: En. Sec. 47, Ch. 105, L. 1933; re-en. Sec. 2815.106, R.C.M. 1935; Sec. 4-152, R.C.M. 1947; amd. and redes. 4-2-105 by Sec. 17, Ch. 387, L. 1975; R.C.M. 1947, 4-2-105; amd. Sec. 22, Ch. 530, L. 1995.

16-2-106. Purchase price in advance. A liquor store agent may sell to any person any liquor and table wine that the person is entitled to purchase in conformity with the provisions of this code and the rules implementing this code. An agent may, under the terms and conditions that the agent establishes, deliver liquor and table wine purchased from the agent's agency liquor store.

History: En. Sec. 12, Ch. 105, L. 1933; re-en. Sec. 2815.71, R.C.M. 1935; amd. Sec. 4, Ch. 154, L. 1965; amd. Sec. 1, Ch. 162, L. 1969; Sec. 4-116, R.C.M. 1947; amd. and redes. 4-2-106 by Sec. 8, Ch. 387, L. 1975; R.C.M. 1947, 4-2-106; amd. Sec. 12, Ch. 68, L. 1987; amd. Sec. 23, Ch. 530, L. 1995.

16-2-107. No open alcoholic beverage container or alcoholic beverage consumption on premises of agency store. An agent and the agent's employees in an agency store may not allow any alcoholic beverage container to be opened on the premises of an agency liquor store or allow any alcoholic beverage to be consumed on the premises of an agency liquor store, nor may any person open an alcoholic beverage container or consume any alcoholic beverage in an agency liquor store.

History: En. Sec. 15, Ch. 105, L. 1933; re-en. Sec. 2815.74, R.C.M. 1935; Sec. 4-120, R.C.M. 1947; amd. and redes. 4-2-107 by Sec. 10, Ch. 387, L. 1975; R.C.M. 1947, 4-2-107; amd. Sec. 2, Ch. 47, L. 1983; amd. Sec. 13, Ch. 68, L. 1987; amd. Sec. 24, Ch. 530, L. 1995.

16-2-108. Disposition of money received. (1) The department may purchase liquor from money deposited to its account in the enterprise fund. The department shall pay from its account in the enterprise fund its administrative expenses associated with the sale of liquor, subject to the limits imposed by legislative appropriation. An obligation created or incurred by the department may not be a debt or claim against the state of Montana but must be payable by the department solely from funds derived from the operation of state liquor sales. The department shall pay into the state treasury to the credit of the enterprise fund the receipts from the sale of liquor and all taxes collected by it. Taxes and the net proceeds from the operation of state liquor sales must be transferred to the general fund.

(2) All liquor license fees and permit fees collected by the department must be deposited into the department's liquor enterprise fund.

(3) The department shall pay from its account in the liquor enterprise fund:

(a) expenses associated with administering liquor licensing and fee collection; and

(b) expenses associated with investigations pursuant to its agreement with the department of justice.

(4) The net proceeds of the liquor enterprise fund must be transferred to the general fund.

History: En. Sec. 94, Ch. 105, L. 1933; re-en. Sec. 2815.154, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1939; amd. Sec. 211, Ch. 147, L. 1963; Sec. 4-229, R.C.M. 1947; amd. and redes. 4-1-406 by Sec. 41, Ch. 387, L. 1975; amd. Sec. 1, Ch. 398, L. 1977; R.C.M. 1947, 4-1-406; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 14, Ch. 68, L. 1987; amd. Sec. 1, Ch. 225, L. 1989; amd. Sec. 25, Ch. 530, L. 1995; amd. Sec. 2, Ch. 448, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 448 in (1) near middle of second sentence after "expenses" inserted "associated with the sale of liquor", in fourth sentence near end after "taxes" deleted "and license and permit fees", and in fifth sentence near beginning after "Taxes" deleted "license and permit fees"; inserted (2) requiring liquor license and permit fees to be deposited in department's liquor enterprise fund; inserted (3) requiring department to pay certain expenses from its account in the liquor enterprise fund; inserted (4) requiring net proceeds of the liquor enterprise fund to be transferred to the general fund; and made minor changes in style. Amendment effective April 30, 2001.

Applicability: Section 6, Ch. 448, L. 2001, provided: "[Sections 1 and 2] [15-1-501 and 16-2-108] apply to fees collected after June 30, 2001."

16-2-109. Number and location of agency liquor stores. (1) (a) In a community with a population of 12,000 or less, there may be one agency liquor store. In communities with populations greater than 12,000, there may be one agency liquor store for the first 12,000 inhabitants and one additional agency liquor store within increments of population of 40,000 inhabitants above 12,000 inhabitants. In determining population, the department shall use the same methods used for determining increases in the retail license quota system as provided in 16-4-201.

(b) In communities that are eligible for more than one agency liquor store, an agency liquor store established after April 25, 1995, may not be located within a 1-mile radius of any other agency liquor store in the community.

(2) An agency liquor store established after April 25, 1995, may not be located in a community that is closer than 35 miles to another community in which an agency liquor store is presently located, except in the circumstance when the most recent population estimates show a 25% growth in population or a growth of 1,000 inhabitants within a 2-year period, whichever

is greater, and when this population increase is reasonably expected to continue for at least 5 years.

History: En. Sec. 9, Ch. 530, L. 1995; amd. Sec. 22, Ch. 7, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 7 in (1)(a) at end of third sentence substituted "16-4-201" for "16-4-501". Amendment effective October 1, 2001.

Cross-References

Community defined, 16-1-106.

16-2-110. State lien on liquor in agency liquor stores. The state has a first lien with an absolute first priority to secure any outstanding amounts due the state for liquor purchased on any inventory, including any after-acquired inventory in the possession of an agent or on the premises of an agency liquor store, to secure payment for the existing inventory. The state has the right to physically recover any inventory from an agency liquor store for any failure to timely make payments.

History: En. Sec. 10, Ch. 530, L. 1995.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Part 2
Price of Liquor

16-2-201. Reduction for quantity sales of liquor. (1) Reduction of 8% of the posted price of liquor sold at the agency liquor store must be made by the department for sales of liquor to any licensee purchasing liquor in unbroken case lots. No other reduction may be made to any other person by the department for quantity sales of liquor.

(2) This section does not prevent an agent from providing purchase discounts or selling liquor to any other person at a price less than the agent's established retail price. However, an agent is prohibited from selling liquor to any person at a price less than the department's posted price.

History: En. Sec. 1, Ch. 185, L. 1943; amd. Sec. 1, Ch. 334, L. 1975; Sec. 4-117, R.C.M. 1947; amd. and redes. 4-2-201 by Sec. 9, Ch. 387, L. 1975; R.C.M. 1947, 4-2-201; amd. Sec. 26, Ch. 530, L. 1995.

16-2-202. Repealed. Sec. 3, Ch. 690, L. 1985.

History: En. 4-114.1 by Sec. 1, Ch. 359, L. 1974; Sec. 4-114.1, R.C.M. 1947; redes. 4-2-202 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-2-202.

16-2-203. Department sales to licensees. The department may sell through its stores to licensees licensed under this code all kinds of liquor and table wine at the posted price thereof in the store in which the liquor and table wine are sold. All sales shall be upon a cash basis.

History: En. Sec. 14, Ch. 84, L. 1937; Sec. 4-416, R.C.M. 1947; amd. and redes. 4-2-204 by Sec. 93, Ch. 387, L. 1975; amd. Sec. 3, Ch. 496, L. 1977; R.C.M. 1947, 4-2-204(part); amd. Sec. 10, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 15, Ch. 68, L. 1987.

Part 3
Sale of Table Wine

16-2-301. Retail selling price on table wine — tax on certain table wine. (1) The retail selling price at which table wine is sold at an agency liquor store is as determined by the agent.

(2) In addition to the tax on wine assessed under 16-1-411, there is a tax of 1 cent a liter on table wine sold by a table wine distributor to an agent as described in subsection (1). This additional tax must be paid to the department by the distributor in the same manner as the tax under 16-1-411 is paid. The department shall deposit the tax paid under this section in the general fund.

(3) For the purposes of this section, "table wine" does not include hard cider.

History: En. Sec. 9, Ch. 699, L. 1979; amd. Sec. 1, Ch. 629, L. 1987; amd. Sec. 27, Ch. 530, L. 1995; amd. Sec. 3, Ch. 399, L. 1997.

Cross-References

Hard cider defined, 16-1-106.

16-2-302. Repealed. Sec. 41, Ch. 530, L. 1995.
History: En. Sec. 10, Ch. 699, L. 1979; amd. Sec. 16, Ch. 68, L. 1987; amd. Sec. 2, Ch. 629, L. 1987.

16-2-303. Repealed. Sec. 41, Ch. 530, L. 1995.
History: En. Sec. 11, Ch. 699, L. 1979.

Part 4
Conversion of Liquor Stores (Repealed)

16-2-401 through 16-2-406. Repealed. Sec. 315, Ch. 42, L. 1997.

Compiler's Comments

Histories of Repealed Sections:

16-2-401. En. Sec. 1, Ch. 530, L. 1995.
16-2-402. En. Sec. 2, Ch. 530, L. 1995.
16-2-403. En. Sec. 3, Ch. 530, L. 1995.
16-2-404. En. Sec. 4, Ch. 530, L. 1995.
16-2-405. En. Sec. 5, Ch. 530, L. 1995.
16-2-406. En. Sec. 6, Ch. 530, L. 1995.

16-2-407. Repealed. Secs. 315(2), 316(2), Ch. 42, L. 1997.
History: En. Sec. 7, Ch. 530, L. 1995.

16-2-408. Repealed. Sec. 315, Ch. 42, L. 1997.
History: En. Sec. 8, Ch. 530, L. 1995.

CHAPTER 3

CONTROL OF LIQUOR, BEER, AND WINE

Part 1 — Official Seal and Other Controls

16-3-101. Alcoholic beverage transactions — only in accordance with code.
16-3-102. Repealed.
16-3-103. Unlawful sales solicitation or advertising — exceptions.
16-3-104. Common carriers to purchase beer from brewer, beer importer, or wholesaler.
16-3-105. Restrictions on alcoholic beverages in hotels.
16-3-106. Conveyance of liquors, table wines, and beer — opening alcoholic beverages during transit forbidden.
16-3-107. Resident representatives required.

Part 2 — Regulation of Brewers, Beer Importers, and Beer Wholesalers

16-3-201. Possession, manufacture, importation, or disposal of beer in manner other than prescribed unlawful — personal brewing.
16-3-202. Beer sale by department prohibited.
16-3-203 through 16-3-210 reserved.
16-3-211. Monthly report of brewer or beer importer — inspection of books and premises.
16-3-212. Brewers' or beer importers' sales to wholesalers lawful.
16-3-213. Brewers or beer importers not to retail beer — small brewery exceptions.
16-3-214. Beer sales by brewers — sample room exception.
16-3-215 and 16-3-216 reserved.
16-3-217. Purposes.
16-3-218. "Distribute" defined.
16-3-219. Dock sales restricted.
16-3-220. Wholesalers' service obligations — applicability.
16-3-221. Illegal acts by brewers or beer importers.
16-3-222. Mandatory provisions of brewer-wholesaler or beer importer-wholesaler contracts, agreements, and franchises.
16-3-223. Transfer of wholesaler's interest in business.
16-3-224. Contractual or franchise relationship — existence by actions.
16-3-225. Injunction to prevent franchise cancellation.
16-3-226. Brewer-wholesaler or beer importer-wholesaler agreements filed with department.
16-3-227 through 16-3-229 reserved.
16-3-230. Beer required to be shipped to wholesaler.
16-3-231. Monthly report of wholesaler.
16-3-232. Beer sales by wholesaler.

16-3-233. Sales to public by wholesaler unlawful.
16-3-234. Consumption of beer on wholesalers' premises unlawful.
16-3-235. Carriers' reports of beer transported.
16-3-236 through 16-3-240 reserved.
16-3-241. Furnishing of fixtures or advertising matter to retailers by brewers, beer importers, and wholesalers unlawful — exceptions.
16-3-242. Financial interest in retailers prohibited.
16-3-243. Seven-day credit limitation.
16-3-244. Beer advertising limitations.

Part 3 — Retail Sales Restrictions

16-3-301. Unlawful purchases, transfers, sales, or deliveries — presumption of legal age.
16-3-302. Sale by retailer for consumption on premises.
16-3-303. Sale of beer by retailer for consumption off premises.
16-3-304. Closing hours for licensed retail establishments.
16-3-305. Sale of alcoholic beverages during closed hours unlawful — lawful business need not be closed.
16-3-306. Proximity to churches and schools restricted.
16-3-307. Sale of liquor at less than posted price unlawful.
16-3-308. Refilling of liquor bottles prohibited.
16-3-309. Sales prohibited by ordinance.
16-3-310. Lapse of license for nonuse.
16-3-311. Suitable premises for licensed retail establishments.

Part 4 — Sale of Table Wine

16-3-401. Short title — public policy — purpose.
16-3-402. Importation of wine — records.
16-3-403. To whom table wine distributor may sell.
16-3-404. Monthly report of table wine distributor.
16-3-405. Carriers' reports of table wine transported.
16-3-406. Financial interest in retailers prohibited.
16-3-407 through 16-3-410 reserved.
16-3-411. Domestic winery.
16-3-412 through 16-3-414 reserved.
16-3-415. Definitions.
16-3-416. Table wine distributor provisions.
16-3-417. Supplier provisions.
16-3-418. Dual appointments — equal support — alternate supplier — dock sales.
16-3-419. Suppliers' prohibitions.
16-3-420. Applicability.
16-3-421. Injunction.

Part 1
Official Seal and Other Controls

16-3-101. Alcoholic beverage transactions — only in accordance with code. (1) A person who manufactures, imports, distributes, or sells alcoholic beverages or the person's agent may not give or sell to any person within the state any alcoholic beverage except as may be permitted by and in accordance with the provisions of this code.

(2) (a) Except as otherwise provided by this code, a person or the person's agent may not ship, transport, or consign or cause to be shipped, transported, or consigned:

(i) any alcoholic beverage to any person in this state who does not hold a valid wholesaler's license or connoisseur's license issued by the department; or

(ii) any liquor except to the state liquor warehouse.

(b) The prohibition in subsection (2)(a) includes alcoholic beverages ordered or purchased by telephone, computer, or other device, except by persons holding a valid connoisseur's license provided for in 16-4-901.

(3) Except as otherwise provided by this code, alcoholic beverages shipped, transported, or consigned pursuant to subsection (2)(a) and intended for sale to any person not licensed under this code must be distributed by the licensed wholesaler to a licensed retailer for sale to the ultimate consumer.

History: **En. Sec. 46, Ch. 105, L. 1933; re-en. Sec. 2815.105, R.C.M. 1935; Sec. 4-151, R.C.M. 1947; redes. 4-3-101 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-101; amd. Sec. 2, Ch. 19, L. 1985; amd. Sec. 17, Ch. 68, L. 1987; amd. Sec. 3, Ch. 543, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 543 in (1) at beginning substituted "A person who manufactures, imports, distributes, or sells alcoholic beverages or the person's agent may not give or sell" for "No brewer, beer importer, distiller, or manufacturer of alcoholic beverages shall, within the state, by himself, his clerk, servant, or agent, give", after "person" inserted "within the state", and at end substituted "provisions of this code" for "rules made under this code"; inserted (2) concerning restrictions on shipping, transportation, and consignment; inserted (3) concerning requirement of distribution by licensed wholesaler or retailer; and made minor changes in style. Amendment effective May 1, 2001.

Cross-References

Rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

16-3-102. Repealed. Sec. 4, Ch. 47, L. 1983.

History: **En. Sec. 53, Ch. 105, L. 1933; re-en. Sec. 2815.112, R.C.M. 1935; Sec. 4-158, R.C.M. 1947; amd. and redes. 4-3-102 by Sec. 21, Ch. 387, L. 1975; R.C.M. 1947, 4-3-102; amd. Sec. 11, I.M. No. 81, app. Nov. 7, 1978.**

16-3-103. Unlawful sales solicitation or advertising — exceptions. (1) A person within the state may not:

(a) canvass for, receive, take, or solicit orders for the purchase or sale of any liquor or act as agent or intermediary for the sale or purchase of any liquor or be represented as an agent or intermediary unless permitted to do so under rules that are promulgated by the department to govern the activities;

(b) canvass for or solicit orders for the purchase or sale of any beer or malt liquor except in the case of beer proposed to be sold to beer licensees duly authorized to sell beer under the provisions of this code;

(c) exhibit, publish, or display or permit to be exhibited, published, or displayed any form of advertisement or any other announcement, publication, or price list of or concerning liquor or where or from whom the same may be had, obtained, or purchased unless permitted to do so by the rules of the department and then only in accordance with the rules.

(2) This section does not apply to:

(a) the department, any act of the department, any agency liquor store;

(b) the receipt or transmission of a telegram or letter by any telegraph agent or operator or post-office employee in the ordinary course of employment as the agent, operator, or employee; or

(c) the sale and serving of beer in the grandstand and bleacher area of a county fairground or public sports arena under a special permit issued pursuant to 16-4-301 or a catering endorsement issued pursuant to 16-4-111 or 16-4-204.

History: **En. Sec. 65, Ch. 105, L. 1933; re-en. Sec. 2815.124, R.C.M. 1935; amd. Sec. 1, Ch. 140, L. 1974; amd. Sec. 1, Ch. 274, L. 1975; Sec. 4-170, R.C.M. 1947; redes. 4-3-103 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-103; amd. Sec. 1, Ch. 134, L. 1985; amd. Sec. 1, Ch. 180, L. 1987; amd. Sec. 3, Ch. 599, L. 1993; amd. Sec. 28, Ch. 530, L. 1995.**

Cross-References

Rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

16-3-104. Common carriers to purchase beer from brewer, beer importer, or wholesaler. It shall be unlawful for the operator of any common carrier or its employees to make sale of or dispose of any beer or malt liquors except such as shall have been lawfully acquired or purchased from a duly licensed brewer, beer importer, or wholesaler.

History: **En. Sec. 37, Ch. 106, L. 1933; re-en. Sec. 2815.41, R.C.M. 1935; Sec. 4-338, R.C.M. 1947; amd. and redes. 4-3-104 by Sec. 67, Ch. 387, L. 1975; R.C.M. 1947, 4-3-104; amd. Sec. 3, Ch. 19, L. 1985.**

Cross-References

Regulation of carriers of property, Title 69, ch. 11, part 4.

16-3-105. Restrictions on alcoholic beverages in hotels. Except in the case of alcoholic beverages kept or consumed in premises for which a license has been granted under the law and which form a part of a hotel, no person shall:

(1) keep or consume alcoholic beverages in any part of a hotel other than a private guest room;

(2) keep or have any alcoholic beverage in any room in a hotel unless he is a bona fide guest of the hotel and is duly registered in the office of the hotel as an occupant of that room.

History: En. Sec. 64, Ch. 105, L. 1933; re-en. Sec. 2815.123, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1974; Sec. 4-169, R.C.M. 1947; redes. 4-3-105 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-105; amd. Sec. 18, Ch. 68, L. 1987.

Cross-References

Licensing and regulation of hotels and motels, Title 50, ch. 51.

16-3-106. Conveyance of liquors, table wines, and beer — opening alcoholic beverages during transit forbidden. (1) It is lawful to carry or convey liquor or table wine to any agency liquor store and to and from the state liquor warehouse or any depot established by the department for the purposes of this code, and when permitted to do so by this code and the rules promulgated under this code, it is lawful for any common carrier or other person to carry or convey liquor or table wine sold by a vendor from an agency liquor store or to carry or convey beer, when lawfully sold by a brewer, from the premises where the beer was manufactured or from premises where the beer may be lawfully kept and sold to any place to which the liquor, table wine, or beer may be lawfully delivered under this code and the rules promulgated under this code.

(2) A common carrier or any other person may not open, break, or allow to be opened or broken any package or vessel containing an alcoholic beverage or drink or use or allow to be drunk or used any alcoholic beverage while being carried or conveyed.

History: En. Sec. 17, Ch. 105, L. 1933; re-en. Sec. 2815.76, R.C.M. 1935; Sec. 4-122, R.C.M. 1947; amd. and redes. 4-2-103 by Sec. 12, Ch. 387, L. 1975; R.C.M. 1947, 4-2-103; amd. Sec. 19, Ch. 68, L. 1987; amd. Sec. 29, Ch. 530, L. 1995.

Cross-References

Rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

16-3-107. Resident representatives required. (1) For the purposes of this section, "vendor" means a person, partnership, association, or corporation that sells liquor to the department.

(2) A vendor who desires to promote the sale of his product in the state shall employ one representative and may employ an additional representative to promote the sale of the vendor's product. A representative must be or become after employment a resident of the state. If a vacancy occurs in a representative position, the vendor shall fill the position within 60 days after the vacancy occurs.

History: En. Sec. 1, Ch. 293, L. 1987.

Part 2

Regulation of Brewers, Beer Importers, and Beer Wholesalers

16-3-201. Possession, manufacture, importation, or disposal of beer in manner other than prescribed unlawful — personal brewing. (1) It is unlawful to manufacture, import, sell or dispose of, or possess for the purpose of sale beer of any kind or character of an alcoholic content greater than authorized or other than in the manner permitted by this code.

(2) This code does not prohibit the manufacture of beer, for personal or family use and not intended for sale, that meets the exemptions of 26 U.S.C. 5053(e) and regulations implementing that section, including the brewing of beer, for personal or family use, on premises other than those of the person brewing the beer.

History: En. Sec. 5, Ch. 106, L. 1933; re-en. Sec. 2815.14, R.C.M. 1935; Sec. 4-309, R.C.M. 1947; amd. and redes. 4-3-201 by Sec. 49, Ch. 387, L. 1975; R.C.M. 1947, 4-3-201; amd. Sec. 4, Ch. 19, L. 1985; amd. Sec. 2, Ch. 546, L. 1997.

Cross-References

Beer defined, 16-1-106.

16-3-202. Beer sale by department prohibited. The sale of beer by the department is hereby prohibited.

History: En. Sec. 4, Ch. 106, L. 1933; re-en. Sec. 2815.13, R.C.M. 1935; amd. Sec. 1, Ch. 89, L. 1937; amd. Sec. 1, Ch. 186, L. 1947; Sec. 4-308, R.C.M. 1947; amd. and redes. 4-3-202 by Sec. 48, Ch. 387, L. 1975; R.C.M. 1947, 4-3-202.

16-3-203 through 16-3-210 reserved.

16-3-211. Monthly report of brewer or beer importer — inspection of books and premises. Every brewer and every beer importer licensed to do business in this state shall, on or before the 15th day of each month, in the manner and form as shall be prescribed by the department, make an exact return to the department of the amount of beer manufactured or imported by him and the amount sold by him in the previous month and of his inventory. The department shall have the right at any time to make an examination of any brewer's or beer importer's books and of his premises and otherwise check the accuracy of any such return or to check the alcoholic content of beer manufactured or imported by him.

History: En. Sec. 7, Ch. 106, L. 1933; re-en. Sec. 2815.16, R.C.M. 1935; Sec. 4-311, R.C.M. 1947; amd. and redes. 4-3-203 by Sec. 51, Ch. 387, L. 1975; R.C.M. 1947, 4-3-203; amd. Sec. 5, Ch. 19, L. 1985.

Cross-References

Failure to make return — penalty, 16-1-409.

16-3-212. Brewers' or beer importers' sales to wholesalers lawful. It shall be lawful for any licensed brewer to sell or deliver beer manufactured by him to any licensed wholesaler. It shall be lawful for any licensed beer importer to sell or deliver beer imported by him to any licensed wholesaler.

History: En. Sec. 9, Ch. 106, L. 1933; amd. Sec. 3, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.18, R.C.M. 1935; Sec. 4-313, R.C.M. 1947; amd. and redes. 4-3-204 by Sec. 52, Ch. 387, L. 1975; R.C.M. 1947, 4-3-204; amd. Sec. 6, Ch. 19, L. 1985.

16-3-213. Brewers or beer importers not to retail beer — small brewery exceptions. (1) Except as provided for small breweries in subsection (2), it is unlawful for any brewer or breweries or beer importer to have or own any permit to sell or retail beer at any place or premises. It is the intention of this section to prohibit brewers and beer importers from engaging in the retail sale of beer. This section does not prohibit breweries from selling and delivering beer manufactured by them, in original packages, at either wholesale or retail.

(2) (a) For the purposes of this section, a "small brewery" is a brewery that has an annual nationwide production of not less than 100 barrels or more than 10,000 barrels.

(b) A small brewery may, at one location for each brewery license, provide samples of beer that were brewed and fermented on the premises in a sample room located on the licensed premises. The samples may be provided with or without charge between the hours of 10 a.m. and 8 p.m. No more than 48 ounces of malt beverage may be sold or given to each individual customer during a business day.

History: En. Sec. 11, Ch. 106, L. 1933; re-en. Sec. 2815.20, R.C.M. 1935; Sec. 4-315, R.C.M. 1947; redes. 4-3-205 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-205; amd. Sec. 7, Ch. 19, L. 1985; amd. Sec. 1, Ch. 149, L. 1985; amd. Sec. 1, Ch. 116, L. 1999.

16-3-214. Beer sales by brewers — sample room exception. (1) Subject to the limitations and restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year, upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the department as required by 16-4-101, must be licensed by the department, in accordance with the provisions of this code and rules prescribed by the department, to:

(a) sell and deliver beer from its storage depot or brewery located in Montana to:

(i) a wholesaler; or

(ii) any retail licensees who are entitled to purchase beer from a brewer under this code; or

(iii) the public; or

(b) provide its own products for consumption on its licensed premises without charge or, if it is a small brewery, provide its own products at a sample room as provided in 16-3-213; or

(c) do any one or more of the acts of sale and delivery of beer as provided in this code.

(2) A brewery may not use a common carrier for delivery of the brewery's product to the public.

(3) An additional license fee may not be imposed on a brewery providing its own products on its licensed premises for consumption on the premises.

(4) This section does not prohibit a brewer located outside of Montana from shipping and selling beer directly to a wholesaler in this state under the provisions of 16-3-230.

History: En. Sec. 13, Ch. 106, L. 1933; amd. Sec. 4, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.22, R.C.M. 1935; amd. Sec. 4, Ch. 166, L. 1951; amd. Sec. 1, Ch. 135, L. 1959; amd. Sec. 1, Ch. 296, L. 1969; amd. Sec. 1, Ch. 421, L. 1971; Sec. 4-317, R.C.M. 1947; amd. and redes. 4-3-206 by Sec. 53, Ch. 387, L. 1975; R.C.M. 1947, 4-3-206; amd. Sec. 2, Ch. 149, L. 1985; amd. Sec. 1, Ch. 721, L. 1991; amd. Sec. 1, Ch. 122, L. 1993; amd. Sec. 2, Ch. 116, L. 1999; amd. Sec. 4, Ch. 543, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 543 at end of (1)(c) inserted "as provided in this code"; inserted (2) concerning prohibition on using common carrier; and made minor changes in style. Amendment effective May 1, 2001.

Cross-References

Rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

16-3-215 and 16-3-216 reserved.

16-3-217. Purposes. The legislature finds and declares that the purposes of 16-3-218 through 16-3-226 are to assure continued interbrand competition in malt beverage sales through competing independent wholesalers and to assure breweries the ability to protect the reputations of their products through quality control arrangements.

History: En. Sec. 1, Ch. 61, L. 1987.

Cross-References

Malt beverage defined, 16-1-106.

Unfair trade practices generally, Title 30, ch. 14, part 2.

16-3-218. "Distribute" defined. As used in 16-3-219, 16-3-220, 16-4-103, and 16-4-108, "distribute" means to deliver beer or wine to a retailer's premises licensed to sell beer or table wine.

History: En. Sec. 3, Ch. 61, L. 1987.

16-3-219. Dock sales restricted. A beer wholesaler or a table wine distributor may not deliver beer or wine to a licensed retailer at any location other than the retailer's licensed premises, except that a retailer located within the territory for which a wholesaler has been appointed to distribute a brand may personally or through his employee obtain from the wholesaler's warehouse quantities of beer not exceeding three barrels in packaged or draft form. An all-beverages licensee may upon presentation of his license or a photocopy of his license personally obtain from any wholesaler's warehouse such quantities of beer as he and the wholesaler may agree to buy and sell.

History: En. Sec. 4, Ch. 61, L. 1987.

16-3-220. Wholesalers' service obligations — applicability. (1) A wholesaler appointed to distribute a brand of beer within a territory specified by agreement pursuant to 16-3-222 shall call on and offer that brand to at least 75% of the retailers within that territory at least every 3 weeks. However, if the brand of beer for which the wholesaler is appointed is a product of a brewer or beer importer whose products are not generally available, the wholesaler shall, at least every 3 weeks, call on and offer that brand to as many retailers within that territory as is reasonably possible given the amount of that brand that is available to the wholesaler.

(2) If a retailer's account with a wholesaler is current as required under 16-3-243, the wholesaler may not refuse to sell the retailer any generally available brand of beer for which the wholesaler has been appointed for the territory in which the retailer is located. The wholesaler shall offer to deliver the beer to the retailer at least every 3 weeks.

(3) For the purposes of this section, a brewer or beer importer's products are not generally available if:

(a) all of the brands of a brewer or beer importer shipped to a wholesaler during the most recent calendar quarter total less than 600 barrels;

(b) all of the brands of a brewer or beer importer shipped into the state total less than 1,200 barrels in each of the 2 consecutive preceding calendar quarters; and

(c) all of the brands produced by the brewer at all of its facilities total less than 150,000 barrels per year.

(4) This section applies to all beer distribution agreements entered into, assigned, or amended after July 1, 1986. It does not apply to a distribution agreement for a named brand

entered into before July 1, 1986, but does not prohibit a brewer who is a party to an agreement from requiring the appointed wholesaler to fulfill similar service obligations in the territory.

History: En. Sec. 5, Ch. 61, L. 1987; amd. Sec. 1, Ch. 139, L. 1995; amd. Sec. 91, Ch. 42, L. 1997.

16-3-221. Illegal acts by brewers or beer importers. It is unlawful for any brewer or beer importer or any officer, agent, or representative of any brewer or beer importer to:

(1) coerce, attempt to coerce, or persuade any person licensed to sell beer at wholesale to enter into any agreement or to take any action that would violate or tend to violate any of the laws of this state or any rules promulgated by the department;

(2) sell its products in the state without a written contract, which conforms to the provisions of 16-3-221 through 16-3-226, with each appointed licensed wholesale distributor;

(3) designate or allow more than one wholesale distributor to sell or distribute a specific brand of the brewer's or beer importer's products to retail licensees in the same area, provided that nothing in this part prohibits the brewer or beer importer from designating more than one wholesale distributor to sell or distribute different brands of the same manufacturer to retail licensees in the same area;

(4) fix or maintain the price at which a wholesale distributor resells the brewer's or beer importer's products. Without limitation, it is a violation of this section if:

(a) after a wholesale distributor has exceeded a resale price increase recommended by a brewer or beer importer, the brewer or beer importer raises the price that it charges the wholesale distributor for those products within 60 days;

(b) after a wholesale distributor has exceeded a resale price increase recommended by a brewer or beer importer, the brewer or beer importer raises the price that it charges the wholesale distributor in an amount proportionately larger than the amount that it raised the wholesale distributor's prices initially when compared to the increase in the resale price that it recommended to the wholesale distributor; or

(c) the brewer or beer importer links or ties its participation in promotional discounts to the wholesale distributor's compliance with any recommended resale price.

(5) cancel or terminate, except for just cause or in accordance with the current terms and standards established by the brewer or beer importer then equally applicable to all wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or entered into after that date to sell beer manufactured by the brewer or imported by the beer importer. A brewer or beer importer may, notwithstanding the preceding sentence, make reasonable classifications among wholesalers. If a brewer or beer importer cancels or terminates a wholesaler's franchise, the brewer or beer importer has the burden of proving that the classification was reasonable and not arbitrary. After July 1, 1974, the provisions of 16-3-221 through 16-3-226 must be a part of any franchise, contract, agreement, or understanding, whether written or oral, between any wholesaler of beer licensed to do business in this state and any manufacturer or beer importer doing business with the licensed wholesaler just as though the provisions had been specifically agreed upon between the wholesaler and the manufacturer or beer importer.

History: En. 4-317.2 by Sec. 1, Ch. 322, L. 1974; Sec. 4-317.2, R.C.M. 1947; redes. 4-3-207 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-207; amd. Sec. 8, Ch. 19, L. 1985; amd. Sec. 1, Ch. 409, L. 1995; amd. Sec. 1, Ch. 130, L. 1997.

Cross-References

Unfair trade practices generally, Title 30, ch. 14, part 2.

16-3-222. Mandatory provisions of brewer-wholesaler or beer importer-wholesaler contracts, agreements, and franchises. All contracts, agreements, or franchises between a brewer and a wholesaler or a beer importer and a wholesaler must specifically set forth or contain the following:

(1) that the brewer or beer importer or any officer, agent, or representative of any brewer or beer importer and the wholesaler involved mutually shall determine the size or extent of the area in which the wholesaler may sell or distribute the products of the brewer or beer importer to the retail licensees. The territory must be the territory agreed upon between the wholesaler and brewer or the wholesaler and beer importer and may not be changed without the mutual consent of both the wholesaler and brewer or the wholesaler and beer importer.

(2) the agreed-upon brands of the brewer or beer importer to be sold by the wholesaler;

(3) that the brewer or beer importer recognizes that the wholesaler is free to manage the wholesaler's business in the manner that the wholesaler considers best and that this prerogative vests in the wholesaler the exclusive right to establish selling prices, to select the brands that the wholesaler wishes to handle, and to determine the effort and resources that the wholesaler will exert to develop and promote the sale of the brewer's or beer importer's products handled by the wholesaler;

(4) a procedure for the review of alleged wholesaler deficiencies, including the submission in writing to the wholesaler by the brewer or beer importer of the deficiencies, if the deficiencies are susceptible of correction and if the wholesaler desires to correct the deficiencies, and that a reasonable period of time must be given the wholesaler for rectification of the deficiencies prior to any notice of intent to terminate;

(5) a termination clause providing that the brewer or beer importer shall deliver, in writing, to the wholesaler a 60-day notice of intent to terminate the agreement, contract, or franchise;

(6) that all agreements between a brewer and a wholesaler are interpreted and governed by the laws of Montana;

(7) that in any dispute resulting in litigation between a brewer or a beer importer and a wholesaler, the litigation must occur in a Montana court, either federal or state, unless that forum would create an unreasonable burden on any party, as determined by the court in which the litigation is commenced;

(8) that all agreements between a brewer or a beer importer and a wholesaler must recognize the constitutional right to a jury trial as set forth in Article II, section 26, of the Montana constitution.

History: En. 4-317.3 by Sec. 2, Ch. 322, L. 1974; Sec. 4-317.3, R.C.M. 1947; redes. 4-3-208 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-208; amd. Sec. 9, Ch. 19, L. 1985; amd. Sec. 1, Ch. 194, L. 1999.

16-3-223. Transfer of wholesaler's interest in business. A wholesaler shall have the right to sell or transfer his business or an interest in his business to any person or to one or more members of his family or heirs or legatees, whether the wholesaler operates as an individual, a partnership, or corporation. Provided, however, the consent of the brewer or beer importer in writing is required for such transferee to continue as a wholesaler of said brewer or beer importer, which consent shall consider the personal, financial, and managerial responsibilities and capabilities of such transferee and which consent shall not unreasonably be withheld.

History: En. 4-317.4 by Sec. 3, Ch. 322, L. 1974; Sec. 4-317.4, R.C.M. 1947; redes. 4-3-209 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-209; amd. Sec. 10, Ch. 19, L. 1985.

16-3-224. Contractual or franchise relationship — existence by actions. The doing or accomplishing of any of the following acts constitutes prima facie evidence of a contractual or franchise relationship between a licensed wholesaler and a brewer or beer importer within the contemplation of 16-3-221 through 16-3-226:

(1) the shipment, preparation for shipment, or acceptance of any order by any brewer or beer importer or its agent for any beer to a licensed wholesaler within this state;

(2) the payment by any licensed wholesaler within this state or the acceptance of payment by any brewer or beer importer or its agent for the shipment of an order of beer intended for sale within this state.

History: En. 4-317.5 by Sec. 4, Ch. 322, L. 1974; Sec. 4-317.5, R.C.M. 1947; redes. 4-3-210 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-210; amd. Sec. 11, Ch. 19, L. 1985.

16-3-225. Injunction to prevent franchise cancellation. Any court of competent jurisdiction may enjoin the cancellation or termination of a franchise or agreement between a wholesaler and a brewer or between a wholesaler and a beer importer at the instance of a wholesaler who is or would be adversely affected by the cancellation or termination. In granting an injunction, the court shall provide that the brewer or beer importer shall not supply the customers or territory of the wholesaler who is servicing the territory or customers through other distributors or means while the injunction is in effect.

History: En. 4-317.6 by Sec. 5, Ch. 322, L. 1974; Sec. 4-317.6, R.C.M. 1947; redes. 4-3-211 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-211; amd. Sec. 12, Ch. 19, L. 1985.

Cross-References

Injunctions, Title 27, ch. 19.

Regulation of carriers of property, Title 69, ch. 11, part 4.

16-3-226. Brewer-wholesaler or beer importer-wholesaler agreements filed with department. An exact copy of all agreements, contracts, or franchises between a brewer or beer importer and a wholesaler shall be filed with the department as a public document and shall be available to any of the parties to a dispute. The department, upon the instigation of any action in a court of record, shall file an exact certified copy of the agreement with the court for the court's consideration in determining any matter before it. Any contracts, agreements, or franchises not upon record with the department shall not be considered by any court as having any force or effect.

History: En. 4-317.7 by Sec. 6, Ch. 322, L. 1974; Sec. 4-317.7, R.C.M. 1947; amd. and redes. 4-3-212 by Sec. 55, Ch. 387, L. 1975; R.C.M. 1947, 4-3-212; amd. Sec. 13, Ch. 19, L. 1985.

16-3-227 through 16-3-229 reserved.

16-3-230. Beer required to be shipped to wholesaler. Except as provided in 16-3-214, all beer that is to be distributed in Montana, whether manufactured outside of or within the state of Montana, must be consigned to and shipped, either directly or via a licensed storage depot, to a licensed wholesaler and unloaded into the wholesaler's warehouse in Montana or subwarehouse in Montana. A brewer or beer importer may sell only to wholesalers from a storage depot in Montana and shall maintain records of all beer, including the name or kind received, on hand, and sold. The records may at any time be inspected by a representative of the department. The wholesaler shall distribute the beer from the warehouse or subwarehouse and shall keep records at the wholesaler's principal place of business of all beer, including the name or kind received, on hand, sold, and distributed. The records may be inspected by a representative of the department at any time.

History: En. Sec. 14, Ch. 106, L. 1933; amd. Sec. 5, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.23, R.C.M. 1935; amd. Sec. 1, Ch. 246, L. 1947; amd. Sec. 5, Ch. 166, L. 1951; amd. Sec. 1, Ch. 222, L. 1965; Sec. 4-318, R.C.M. 1947; amd. and redes. 4-4-103 by Sec. 56, Ch. 387, L. 1975; R.C.M. 1947, 4-4-103(part); amd. Sec. 2, Ch. 178, L. 1983; amd. Sec. 14, Ch. 19, L. 1985; amd. Sec. 1, Ch. 192, L. 1999.

16-3-231. Monthly report of wholesaler. Every wholesaler licensed to do business in this state shall, on or before the 15th day of each month, in the manner and form as shall be prescribed by the department, make an exact return to the department of the amount of beer manufactured in this state sold and delivered by him and also of the amount of beer manufactured in places outside of the state sold and delivered by him during the previous month and of his inventory. The department shall have the right at any time to make an examination of the wholesaler's books and of his premises and otherwise check the accuracy of such return or to check the alcoholic content of beer which he may have on hand.

History: En. Sec. 15, Ch. 106, L. 1933; re-en. Sec. 2815.24, R.C.M. 1935; Sec. 4-319, R.C.M. 1947; amd. and redes. 4-3-213 by Sec. 57, Ch. 387, L. 1975; R.C.M. 1947, 4-3-213.

Cross-References

Penalty for inadequate return or failure to file, 16-1-409.

16-3-232. Beer sales by wholesaler. It shall be lawful for any wholesaler to sell and deliver beer purchased or acquired by him to a wholesaler, retailer, or to a common carrier, holding and having a license under this code.

History: En. Sec. 17, Ch. 106, L. 1933; amd. Sec. 6, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.26, R.C.M. 1935; Sec. 4-321, R.C.M. 1947; amd. and redes. 4-3-214 by Sec. 59, Ch. 387, L. 1975; R.C.M. 1947, 4-3-214.

16-3-233. Sales to public by wholesaler unlawful. It shall be unlawful for any wholesaler to give, sell, deliver, or distribute any beer purchased or acquired by him to the public.

History: En. Sec. 18, Ch. 106, L. 1933; amd. Sec. 7, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.27, R.C.M. 1935; amd. Sec. 1, Ch. 274, L. 1973; Sec. 4-322, R.C.M. 1947; redes. 4-3-215 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-215.

16-3-234. Consumption of beer on wholesalers' premises unlawful. It shall be unlawful for any wholesaler to sell, serve, or give away any beer to be consumed on such wholesaler's premises.

History: En. Sec. 19, Ch. 106, L. 1933; re-en. Sec. 2815.28, R.C.M 1935; Sec. 4-323, R.C.M. 1947; redes. 4-3-216 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-216.

16-3-235. Carriers' reports of beer transported. Every railroad and every motor carrier transporting beer manufactured out of this state from points without this state and delivering the same to points within this state shall, if requested by the department, on or before the 15th day of each month, make an exact return to the department of the amount of such beer so transported and delivered by such railroad or motor carrier during the previous month and shall state in such return the name and address of the consignor, the name and address of the consignee, the date of delivery, and the amount delivered. A carrier shall retain for 30 months all pertinent and relevant records necessary for the preparation of this report and any other information the department may require.

History: En. Sec. 4, Ch. 220, L. 1939; Sec. 4-326, R.C.M. 1947; amd. and redes. 4-3-218 by Sec. 61, Ch. 387, L. 1975; R.C.M. 1947, 4-3-218; amd. Sec. 1, Ch. 207, L. 1991.

16-3-236 through 16-3-240 reserved.

16-3-241. Furnishing of fixtures or advertising matter to retailers by brewers, beer importers, and wholesalers unlawful — exceptions. (1) It shall be unlawful for any brewer, beer importer, or wholesaler to lease, furnish, give, or pay for any premises, furniture, fixtures, equipment, signs, or any other advertising matter or any other property to any retail licensee, used or to be used in the dispensation of beer in and about the interior or exterior of the place of business of any licensed retailer, or furnish, give, or pay for any repairs, improvements, painting, or decorating on or within such premises; provided, however, that it shall be lawful for a brewer, beer importer, or wholesaler to furnish, give, or loan to a retail licensee:

(a) bottle openers, can openers, and trays, with or without advertising matter thereon;

(b) advertising matter or novelties, of a value of not to exceed $50 per brewery or beer importer in any calendar year to any one retailer, for display use on the interior of said retailer's place of business;

(c) not more than two illuminated or electrical signs, each of not more than 630 square inches in area, which signs may bear the name, brand name, trade name, trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture, for display by the retail licensee on and within the interior of his place of business or in the windows inside the place of business of the licensed retailer and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises at the time of such display; and

(d) maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition.

(2) A wholesaler may furnish portable equipment used for the temporary cooling, handling, and dispensing of draft beer to a special permittee or a retailer for use in catering an event off his regular premises.

History: En. Sec. 18, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.51, R.C.M. 1935; amd. Sec. 10, Ch. 166, L. 1951; amd. Sec. 1, Ch. 51, L. 1955; amd. Sec. 1, Ch. 110, L. 1959; amd. Sec. 1, Ch. 49, L. 1967; Sec. 4-349, R.C.M. 1947; amd. and redes. 4-3-219 by Sec. 74, Ch. 387, L. 1975; R.C.M. 1947, 4-3-219; amd. Sec. 1, Ch. 568, L. 1981; amd. Sec. 15, Ch. 19, L. 1985; amd. Sec. 1, Ch. 229, L. 1985.

Cross-References

Beer advertising limits, 16-3-244.

16-3-242. Financial interest in retailers prohibited. No brewer, beer importer, or wholesaler shall advance or loan money to or furnish money for or pay for or on behalf of any retailer any license or tax which may be required to be paid for any retailer, and no brewer, beer importer, or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer. A brewer, beer importer, or wholesaler shall be deemed to have such a financial interest within the meaning of this section if:

(1) such brewer, beer importer, or wholesaler owns or holds any interest in or a lien or mortgage against the retailer or his premises;

(2) such brewer, beer importer, or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from or to the other;

(3) any retailer holds an interest, as a stockholder or otherwise, in the business of the wholesaler.

History: En. 4-3-220 by Sec. 75, Ch. 387, L. 1975; R.C.M. 1947, 4-3-220; amd. Sec. 16, Ch. 19, L. 1985.

16-3-243. Seven-day credit limitation. No sale or delivery of beer shall be made to any retail licensee except for cash paid within 7 days after the delivery thereof, and in no event shall any brewer, beer importer, or wholesaler extend more than 7 days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor within 7 days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this code. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of brewers, beer importers, wholesalers, and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the department in its discretion.

History: En. 4-3-221 by Sec. 76, Ch. 387, L. 1975; R.C.M. 1947, 4-3-221; amd. Sec. 17, Ch. 19, L. 1985.

16-3-244. Beer advertising limitations. It shall be lawful to advertise beer containing not more than 7% of alcohol by weight, as defined and regulated, subject to the restrictions on brewers and beer importers contained in 16-3-241 of this code and subject to the following restrictions on retailers. No retail licensee shall display or permit to be displayed on the exterior portion or surface of such retailer's place of business or on the exterior portion or surface of any building of which said place of business is a part or on any premises adjacent thereto, whether any of such premises be owned or leased by the retailer, any sign, poster, or advertisement bearing the name, brand name, trade name, trademark, or other designation indicating the manufacturer, brewer, beer importer, wholesaler, or place of manufacture of any beer whatsoever, unless it is on a marquee, board, or other space used for temporary advertisements and is not displayed for more than 10 days per display period.

History: En. Sec. 11, Ch. 166, L. 1951; Sec. 4-358, R.C.M. 1947; amd. and redes. 4-3-222 by Sec. 77, Ch. 387, L. 1975; R.C.M. 1947, 4-3-222; amd. Sec. 18, Ch. 19, L. 1985; amd. Sec. 1, Ch. 223, L. 1985.

Part 3
Retail Sales Restrictions

16-3-301. Unlawful purchases, transfers, sales, or deliveries — presumption of legal age. (1) It is unlawful for a licensed retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this code.

(2) It is unlawful for a licensed retailer to transport beer from one licensed premises or other facility to any other licensed premises owned by the licensee.

(3) It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

(a) any person under 21 years of age; or

(b) any person actually, apparently, or obviously intoxicated.

(4) Any person under 21 years of age or any other person who knowingly misrepresents the person's qualifications for the purpose of obtaining an alcoholic beverage from the licensee is equally guilty with the licensee and, upon conviction, is subject to the penalty provided in 45-5-624. However, nothing in this section may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

(5) It is mandatory under the provisions of this code that all licensees display in a prominent place in their premises a placard, issued by the department, stating fully the consequences for violations of the provisions of this code by persons under 21 years of age.

(6) For purposes of 45-5-623 and this title, the establishment of the following facts by a person making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

(a) the purchaser falsely represented and supported with documentary evidence that an ordinary and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

(b) the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages; and

(c) the sale was made in good faith and in reasonable reliance upon the representation and appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages. *(See compiler's comments for contingent termination of certain text.)*

History: (1), (2)En. Sec. 31, Ch. 106, L. 1933; amd. Sec. 11, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.33, R.C.M. 1935; amd. Sec. 7, Ch. 166, L. 1951; amd. Sec. 2, Ch. 240, L. 1971; amd. Sec. 3, Ch. 94, L. 1973; Sec. 4-330, R.C.M. 1947; amd. and redes. 4-3-301 by Sec. 64, Ch. 387, L. 1975; Sec. 4-3-301, R.C.M. 1947; (3)En. Sec. 11, Ch. 84, L. 1937; amd. Sec. 3, Ch. 221, L. 1939; amd. Sec. 1, Ch. 71, L. 1953; amd. Sec. 4, Ch. 240, L. 1971; amd. Sec. 5, Ch. 94, L. 1973; Sec. 4-413, R.C.M. 1947; amd. and redes. 4-3-306 by Sec. 91, Ch. 387, L. 1975; Sec. 4-3-306, R.C.M. 1947; (4)En. Sec. 38, Ch. 84, L. 1937; amd. Sec. 2, Ch. 226, L. 1947; amd. Sec. 1, Ch. 161, L. 1951; amd. Sec. 5, Ch. 240, L. 1971; amd. Sec. 6, Ch. 94, L. 1973; Sec. 4-439, R.C.M. 1947; amd. and redes. 4-6-404 by Sec. 104, Ch. 387, L. 1975; Sec. 4-6-404, R.C.M. 1947; R.C.M. 1947, 4-3-301, 4-3-306, 4-6-404(part); amd. Sec. 1, Ch. 186, L. 1979; amd. Sec. 2, Ch. 61, L. 1987; amd. Sec. 1, Ch. 217, L. 1987; (6)En. Sec. 2, Ch. 233, L. 1993; amd. Sec. 1, Ch. 498, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 498 in (3)(b) at beginning deleted "any intoxicated person or"; and made minor changes in style. Amendment effective October 1, 2001.

Contingent Termination Date: Section 9(2), Ch. 217, L. 1987, read: "If the United States congress repeals or removes or a final judgment invalidates the provisions of federal law that require states to raise the legal age for purchasing and possessing alcoholic beverages to 21 as a condition of full receipt of federal highway funds, the governor of Montana shall immediately certify the fact of the repeal, removal, or invalidation to the secretary of state of Montana. This act terminates on the date of such certification."

Cross-References

Legislative authority to enact age restriction, Art. II, sec. 14, Mont. Const.
Giving or receiving liquor as bribe to influence voting, 13-35-214, 13-35-215.
Providing alcoholic beverage to intoxicated person, 16-6-304.
Providing alcoholic beverage to person under 21 years of age, 16-6-305.
Penalties, 16-6-314.
Liability for injuries involving alcohol consumption, 27-1-710.
Bartenders and waitresses to be at least 18 years of age, 39-2-306.
Criminal offense — selling or giving alcoholic beverages to minors, 45-5-623.

16-3-302. Sale by retailer for consumption on premises. (1) It is lawful for a licensed retailer to sell and serve beer, either on draught or in containers, to the public to be consumed on the premises of the retailer.

(2) It is lawful for a licensee who has an all-beverages license that he uses at a golf course to sell alcoholic beverages and for a licensee who has a golf course beer and wine license issued under 16-4-109 to sell beer and wine:

(a) in the building or other structural premises constituting the clubhouse or primary indoor recreational quarters of the golf course; and

(b) at any place within the boundaries of the golf course, from a portable satellite vehicle or other movable satellite device that is moved from place to place, whether inside or outside of a building or other structure.

(3) It is lawful to consume alcoholic beverages sold as provided in subsection (2) at any place within the boundaries of the golf course, whether inside or outside of a building or other structure.

History: En. Sec. 29, Ch. 106, L. 1933; re-en. Sec. 2815.31, R.C.M. 1935; Sec. 4-328, R.C.M. 1947; amd. and redes. 4-3-302 by Sec. 63, Ch. 387, L. 1975; R.C.M. 1947, 4-3-302; amd. Sec. 1, Ch. 646, L. 1987.

16-3-303. Sale of beer by retailer for consumption off premises. It shall be lawful for such retailer to sell or furnish beer to the public with intent that such beer shall be taken away from the premises of such retailer for consumption off the premises of such retailer.

History: En. Sec. 30, Ch. 106, L. 1933; amd. Sec. 10, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.32, R.C.M. 1935; amd. Sec. 1, Ch. 177, L. 1961; Sec. 4-329, R.C.M. 1947; redes. 4-3-303 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-303.

16-3-304. Closing hours for licensed retail establishments. Except as provided in 16-3-305, all licensed establishments wherein alcoholic beverages are sold, offered for sale, or given away at retail shall be closed each day between 2 a.m. and 8 a.m.; provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of alcoholic beverages, then the sale of alcoholic beverages is prohibited within the limits of any such city or town during the time such sale is prohibited by this code and in addition thereto during the hours that it is prohibited by such ordinance. During such hours all persons except the alcoholic beverage licensee and employees of such licensed establishment shall be excluded from the licensed premises.

History: En. Sec. 1, Ch. 161, L. 1943; amd. Sec. 1, Ch. 162, L. 1959; amd. Sec. 1, Ch. 242, L. 1973; Sec. 4-303, R.C.M. 1947; amd. and redes. 4-3-304 by Sec. 46, Ch. 387, L. 1975; R.C.M. 1947, 4-3-304; amd. Sec. 1, Ch. 347, L. 1985.

16-3-305. Sale of alcoholic beverages during closed hours unlawful — lawful business need not be closed. During the hours when the licensed establishments where alcoholic beverages are sold at retail are required by this code to be closed, it shall be unlawful to sell, offer for sale, give away, consume, or allow the consumption of alcoholic beverages. When an establishment licensed to sell alcoholic beverages is operated in conjunction with a hotel, restaurant, bus depot, railway terminal, grocery store, pharmacy, or other lawful business other than that of the sale of alcoholic beverages, then such other lawful business need not be closed.

History: En. Sec. 3, Ch. 161, L. 1943; Sec. 4-304, R.C.M. 1947; amd. and redes. 4-3-305 by Sec. 47, Ch. 387, L. 1975; R.C.M. 1947, 4-3-305; amd. Sec. 2, Ch. 347, L. 1985.

16-3-306. Proximity to churches and schools restricted. (1) Except as provided in subsections (2) through (4), no retail license may be issued pursuant to this code to any business or enterprise whose premises are within 600 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship or as a school other than a commercially operated or postsecondary school. This distance shall be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises. This section is a limitation upon the department's licensing authority.

(2) However, the department may renew a license for any establishment located in violation of this section if the licensee does not relocate his entrances any closer than the existing entrances and if the establishment:

(a) was located on the site before the place of worship or school opened; or

(b) was located in a bona fide hotel, restaurant, or fraternal organization building at the site since January 1, 1937.

(3) Subsection (1) does not apply to licenses for the sale of beer, table wine, or both in the original package for off-premises consumption.

(4) Subsection (1) does not apply within the applicable jurisdiction of a local government that has supplanted the provisions of subsection (1) as provided in 16-3-309.

History: En. Sec. 13, Ch. 84, L. 1937; Sec. 4-415, R.C.M. 1947; amd. and redes. 4-4-107 by Sec. 92, Ch. 387, L. 1975; R.C.M. 1947, 4-4-107; amd. Sec. 1, Ch. 152, L. 1981; amd. Sec. 1, Ch. 662, L. 1983.

Cross-References

Application of this section to sales under catering endorsement, 16-4-204.

16-3-307. Sale of liquor at less than posted price unlawful. It is unlawful for any licensee under the provisions of this code to resell any liquor purchased by the licensee from an agency liquor store or the state of Montana for a sum less than the posted price established by the department and paid by the licensee.

History: En. Sec. 19, Ch. 84, L. 1937; Sec. 4-421, R.C.M. 1947; amd. and redes. 4-3-307 by Sec. 98, Ch. 387, L. 1975; R.C.M. 1947, 4-3-307; amd. Sec. 30, Ch. 530, L. 1995.

16-3-308. Refilling of liquor bottles prohibited. (1) No person, or the agent or employee of such person, who sells or offers liquor for sale may:

(a) place in any liquor bottle any liquor whatsoever other than that contained in such bottle at the time of stamping by the federal government;

(b) possess any liquor bottle in which any liquor has been placed in violation of subsection (1)(a);

(c) by the addition of any substance whatsoever to any liquor bottle, in any manner alter or increase any portion of the original contents contained in such bottle at the time of stamping by the federal government; or

(d) possess any liquor bottle, any portion of the contents of which has been altered or increased in violation of subsection (1)(c).

(2) This section does not prohibit any reuse of liquor bottles which is permitted under laws or regulations of the federal government.

History: En. 4-3-308 by Sec. 117, Ch. 387, L. 1975; R.C.M. 1947, 4-3-308.

Cross-References

Consumer Protection Act, Title 30, ch. 14, part 1.

16-3-309. Sales prohibited by ordinance. (1) An incorporated city may enact an ordinance defining certain areas in its incorporated limits where alcoholic beverages may or may not be sold.

(2) A county may enact an ordinance or resolution defining certain areas in the county, not within the incorporated limits of a city, where alcoholic beverages may or may not be sold.

(3) In enacting such an ordinance or resolution, the county or city may provide that the provisions of 16-3-306(1) do not apply within the jurisdictional area of the ordinance or resolution. If a county or city has supplanted the provisions of 16-3-306(1), upon request of the department the governing body of the county or city must certify to the department whether or not the person or individual identified in the request may lawfully sell alcoholic beverages under the terms of the ordinance or resolution. The department is bound by the determination set forth in the certification.

(4) No county or incorporated city may by ordinance restrict the number of licenses that the department may issue.

History: En. Sec. 14, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.36, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955; amd. Sec. 1, Ch. 205, L. 1959; amd. Sec. 1, Ch. 271, L. 1965; amd. Sec. 1, Ch. 31, L. 1974; Sec. 4-333, R.C.M. 1947; amd. and redes. 4-4-201 by Sec. 66, Ch. 387, L. 1975; amd. Sec. 5, Ch. 496, L. 1977; R.C.M. 1947, 4-4-201(part); amd. Sec. 2, Ch. 662, L. 1983.

Cross-References

Denial of license for premises within prohibited zone, 16-4-405.

County and municipal planning and zoning, Title 76, ch. 2.

16-3-310. Lapse of license for nonuse. Any retail license issued pursuant to this code (including any retail license to sell beer and table wine for off-premises consumption) not actually used in a going establishment for 90 days shall automatically lapse. Upon determining the fact of nonuse for such period, the department shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this section shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, resort, park hotel, tourist facility, or like business, provided such licensee has secured written authority from the department to close and has licensed premises for a specified period of greater than 90 days' duration. Should the department determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision shall not apply.

History: En. 4-4-203 by Sec. 80, Ch. 387, L. 1975; R.C.M. 1947, 4-4-203; amd. Sec. 20, Ch. 68, L. 1987.

16-3-311. Suitable premises for licensed retail establishments. (1) A licensed retailer may use a part of a building as premises licensed for on-premises consumption of alcoholic beverages. The premises must be separated from the rest of the building by permanent walls but may have inside access during lawful hours of operation to the rest of the building even if the businesses or uses in the other part of the building are unrelated to the operation of the premises in which the alcoholic beverages are served.

(2) A licensee whose premises did not meet the requirements of this section on September 24, 1992, shall meet the requirements when an alteration to the premises has been completed and the department has approved the alteration. An alteration is any structural change in a premises. A cosmetic change, such as painting, carpeting, or other interior decorating, is not considered an alteration under this section.

History: En. Sec. 1, Ch. 203, L. 1993.

Part 4
Sale of Table Wine

16-3-401. Short title — public policy — purpose. (1) This part may be cited as the "Wine Distribution Act".

(2) The public policy of the state of Montana is to maintain a system to provide for, regulate, and control the acquisition, importation, and distribution of table wine by licensed table wine distributors.

(3) This part governs relationships between suppliers and table wine distributors, and because the legislature recognizes the public interest and the interests of suppliers and table wine distributors in the fair, efficient, and competitive distribution of table wine, this part is intended to:

(a) protect the table wine distributor's independence in managing the distributor's business, including the establishment of selling prices; and

(b) encourage table wine distributors to devote their best efforts to the sale and distribution of the table wines they sell and distribute.

History: En. Sec. 1, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 1, Ch. 699, L. 1979; amd. Sec. 21, Ch. 68, L. 1987; amd. Sec. 9, Ch. 314, L. 1991; amd. Sec. 31, Ch. 530, L. 1995.

16-3-402. Importation of wine — records. (1) All table wine manufactured outside of Montana and shipped into Montana must be consigned to and shipped to a licensed table wine distributor and be unloaded by the distributor into the distributor's warehouse in Montana or subwarehouse in Montana. The distributor shall distribute the table wine from the warehouse or subwarehouse.

(2) The distributor shall keep records at the distributor's principal place of business of all table wine, including the name or kind received, on hand, sold, and distributed. The records may at all times be inspected by the department.

(3) Table wine that has been shipped into Montana and that has not been shipped to and distributed from a warehouse of a licensed table wine distributor must be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of intoxicating liquor.

History: En. Sec. 4, I.M. 81, app. Nov. 7, 1978; amd. Sec. 3, Ch. 699, L. 1979; amd. Sec. 32, Ch. 530, L. 1995.

Cross-References

Search, seizure, and forfeiture of liquor, 16-6-102 through 16-6-107.

16-3-403. To whom table wine distributor may sell. (1) A table wine distributor may sell and deliver table wine purchased or acquired by the distributor to:

(a) another table wine distributor, retailer, or common carrier that holds a license issued by the department of revenue; and

(b) an agency liquor store.

(2) It is unlawful for any table wine distributor to sell, deliver, or give away any table wine to be consumed on the distributor's premises or to give, sell, deliver, or distribute any table wine purchased or acquired by the distributor to the public.

History: En. Sec. 5, I.M. 81, app. Nov. 7, 1978; amd. Sec. 4, Ch. 699, L. 1979; amd. Sec. 3, Ch. 629, L. 1987; amd. Sec. 33, Ch. 530, L. 1995.

Cross-References

Delivery of wine by table wine distributor at place other than retailer's licensed premises forbidden, 16-3-219.

16-3-404. Monthly report of table wine distributor. Every licensed table wine distributor shall, on or before the fifteenth day of each month, make an exact return to the department of revenue of the amount of table wine purchased or acquired by him during the previous month, the amount of table wine sold and delivered by him during the previous month, and the amount of inventory on hand in the manner and form as shall be prescribed by the department. The department shall have the right at any time to make an examination of the table wine distributor's books and of his premises and otherwise check the accuracy of such return or check the alcoholic content of table wine which he may have on hand.

History: En. Sec. 6, I.M. 81, app. Nov. 7, 1978.

16-3-405. Carriers' reports of table wine transported. Every railroad, motor carrier, and airline transporting table wine manufactured out of this state from points outside this state and delivering to points within this state shall, if requested by the department, on or before the fifteenth day of each month, make an exact return to the department of revenue of the amount of such table wine so transported and delivered by such railroad, motor carrier, or airline during the previous month, and shall state in such return the name and address of the consignor and consignee, the date of delivery, and the amount delivered. A carrier shall retain for 30 months all pertinent and relevant records necessary for the preparation of this report and any other information the department may require.

History: En. Sec. 7, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 2, Ch. 207, L. 1991.

16-3-406. Financial interest in retailers prohibited. (1) No winery or table wine distributor shall advance or loan money to, or furnish money for, or pay for or on behalf of any retailer, any license or tax which may be required to be paid by any retailer, and no winery or table wine distributor shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer.

(2) A winery or table wine distributor shall be deemed to have such a financial interest if:

(a) such winery or table wine distributor owns or holds any interest in or a lien or mortgage against the retailer or his premises; or

(b) such winery or table wine distributor is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from or to the other; or

(c) such table wine distributor extends more than 7 days' credit to a retail licensee or furnishes to any retail licensee any furniture, fixtures, or equipment to be used in the dispensation or sale of table wine; or

(d) any retailer holds an interest as a stockholder, or otherwise, in the business of the table wine distributor.

History: En. Sec. 8, I.M. No. 81, app. Nov. 7, 1978.

16-3-407 through 16-3-410 reserved.

16-3-411. Domestic winery. (1) A winery located in Montana and licensed pursuant to 16-4-107 may:

(a) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;

(b) sell wine it produces at wholesale to wine distributors;

(c) sell wine it produces at retail at the winery directly to the consumer for consumption on or off the premises;

(d) provide, without charge, wine it produces for consumption at the winery;

(e) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it produces;

(f) obtain a special event permit under 16-4-301; or

(g) perform those operations and cellar treatments that are permitted for bonded winery premises under applicable regulations of the United States department of the treasury.

(2) (a) A winery that is located in Montana and licensed pursuant to 16-4-107 and that has an annual production of 25,000 gallons or less of wine may sell wine to retail licensees that are licensed to sell wine under this code. A winery making sales to retail licensees under the provisions of this subsection (2) is considered a table wine distributor for the purposes of collecting taxes on table wine, as provided in 16-1-411.

(b) The winery may use a common carrier for delivery of the wine to licensed wine distributors and retailers. A shipment by common carrier is subject to the provisions of 16-3-106 and must be:

(i) in boxes that are marked with the words: "Wine Shipment From Montana Licensee to Montana Licensee";

(ii) made to the premises of a Montana-licensed wine distributor or retailer licensed by the state and who is in good standing; and

(iii) signed for by the wine distributor or retailer or its employee or agent.

(c) In addition to any records required to be maintained under 16-4-107, a winery that distributes wine within the state under this subsection (2) shall maintain records of all sales and shipments. The winery shall furnish monthly and other reports concerning quantities and prices of table wine that it ships in the state, names and addresses of consignees, and other information that the department may determine to be necessary to ensure that distribution of table wines within this state conforms to the requirements of this code.

History: En. Sec. 1, Ch. 566, L. 1987; amd. Sec. 34, Ch. 530, L. 1995; amd. Sec. 1, Ch. 163, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 163 in (1) in introductory clause substituted "licensed" for "registered"; inserted (1)(g) allowing a winery to perform operations and cellar treatments permitted for bonded winery premises under applicable regulations of the U.S. treasury department; inserted (2) allowing a licensed Montana winery with an annual production of 25,000 gallons or less of wine to sell wine to retail licensees, providing that a winery doing so is considered a table wine distributor for purposes of table wine tax collecting, allowing the winery to use a common carrier to ship wine to a licensed wine distributor or retailer, providing that the shipment is subject to 16-3-106 and must be in boxes marked with certain words, made to the premises of a Montana-licensed wine distributor or retailer, and signed for by the distributor or retailer, and requiring certain recordkeeping and reporting; and made minor changes in style. Amendment effective March 28, 2001.

16-3-412 through 16-3-414 reserved.

16-3-415. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agreement of distributorship" means a contract, agreement, commercial relationship, license, or other arrangement for a definite or an indefinite period of time between a supplier and a table wine distributor that provides for the sale of table wine by the supplier to the table wine distributor.

(2) "Good cause" means failure by a table wine distributor to comply with reasonable business requirements imposed, or sought to be imposed, by a supplier under the terms of an agreement of distributorship if the requirements are imposed on other similarly situated distributors either by the terms of their agreements or in the manner of their enforcement by the supplier.

(3) "Person" means a natural person, corporation, partnership, trust, agency, or other entity and includes individual officers, directors, or other persons in active control of the activities of the entity.

(4) "Supplier" means a winery or an importer of table wines that enters into or is a party to an agreement of distributorship with a table wine distributor.

History: En. Sec. 1, Ch. 314, L. 1991.

Cross-References

Unfair trade practices generally, Title 30, ch. 14, part 2.

16-3-416. Table wine distributor provisions. (1) A supplier or table wine distributor must have a written agreement of distributorship that provides for purchase of the supplier's products from the supplier by the table wine distributor.

(2) An agreement of distributorship must provide that:

(a) a supplier shall notify a table wine distributor in writing at least 60 days prior to termination of an agreement of distributorship unless a termination without notice is permitted as provided in 16-3-417. The written notice must state the reasons for termination. Notice of termination is void if within 60 days of the notice, the table wine distributor rectifies the deficiency stated as the reason for termination and if the deficiency was not stated as reason for termination in a notice previously voided under the provisions of this subsection.

(b) a supplier may not unreasonably withhold or delay approval of a sale or transfer of the ownership, management, or control of a table wine distributorship. However, a table wine distributor shall give a supplier no less than 60 days' prior written notice of any material change in ownership, management, or control.

(3) Within 60 days after entering into an agreement of distributorship, the supplier shall advise the department of the agreement by filing a copy of the agreement that must include the sales area or areas designated for the table wine distributor.

(4) If a supplier terminates an agreement of distributorship under the provisions of subsection (2)(a), the table wine distributor subject to the termination is entitled to compensation for the laid-in cost of inventory. In the event of any termination of the agreement by the supplier other than termination for good cause or for any reason set forth in 16-3-417(3),

the distributor is entitled to compensation for the laid-in cost of inventory and to liquidated damages based on the sales of the brand or brands involved, as may be provided in the agreement. If the supplier and the distributor are unable to agree on the amount of liquidated damages, the amount of liquidated damages must be determined by an arbitrator appointed under subsection (5) of this section.

(5) If undertaken in good faith by a supplier, a supplier may terminate an agreement of distributorship for a legitimate business reason not within the definition of good cause if an arbitrator appointed by the department finds, after hearing the supplier and the table wine distributor, that the termination is in the best interest of the table wine brand concerned. Arbitration under this section must be conducted under the provisions of Title 27, chapter 5.

(6) All agreements of distributorship are interpreted and governed by the laws of Montana.

(7) In any dispute resulting in litigation between a supplier and a distributor, the litigation must occur in a Montana court, federal or state, unless that forum would create an unreasonable burden on any party, as determined by the court in which the litigation is commenced.

(8) Agreements between a supplier and a distributor must recognize the constitutional right to a jury trial as set forth in Article II, section 26, of the Montana constitution.

(9) A provision in an agreement of distributorship that is inconsistent with the requirements of this section is void.

History: En. Sec. 3, Ch. 314, L. 1991; amd. Sec. 1, Ch. 226, L. 1995; amd. Sec. 2, Ch. 194, L. 1999.

16-3-417. Supplier provisions. (1) An agreement of distributorship must provide that a table wine distributor shall:

(a) maintain the financial and competitive capability to efficiently and effectively distribute a supplier's products;

(b) maintain the quality and integrity of a supplier's products in a manner set forth by the supplier;

(c) exert the table wine distributor's best efforts to sell the supplier's wines;

(d) merchandise the products in retail stores as agreed between the table wine distributor and the supplier; and

(e) give a supplier not less than 60 days' written notice of the table wine distributor's intent to terminate an agreement of distributorship.

(2) As provided in 16-3-416, a supplier may terminate an agreement of distributorship based on a deficiency or other good cause by giving 60 days' prior written notice to the table wine distributor.

(3) A supplier may terminate an agreement of distributorship immediately and without notice if the reason for the termination is insolvency, assignment for the benefit of creditors, bankruptcy, or revocation or suspension for more than 14 days of a license to operate that is required by the state or the federal government.

History: En. Sec. 4, Ch. 314, L. 1991.

16-3-418. Dual appointments — equal support — alternate supplier — dock sales. (1) (a) A supplier may appoint one or more table wine distributors to distribute its table wines in a specified territory. If the supplier appoints two or more table wine distributors to sell its table wines in the same or overlapping territories, the supplier shall offer the same prices, delivery, terms, and promotional support to each table wine distributor.

(b) A supplier may not appoint more than one table wine distributor to distribute its hard cider in a specified territory.

(c) For the purposes of this subsection (1), "table wine" has the meaning assigned in 16-1-106, but does not include hard cider.

(2) (a) The holder of an all-beverages license under chapter 4, part 2, may, upon presentation of the license or a photocopy of the license, personally obtain from any distributor's warehouse a quantity of table wine that the licensee may agree to buy and that the distributor may agree to sell.

(b) The holder of a license that permits on-premises consumption of alcoholic beverages under 16-4-401(2) may, upon presentation of the license or a photocopy of the license, personally or through an employee, obtain from any winery described in 16-3-411(2)(a) a quantity of table wine that the licensee may agree to buy and that the winery may agree to sell.

History: En. Sec. 5, Ch. 314, L. 1991; amd. Sec. 4, Ch. 399, L. 1997; amd. Sec. 2, Ch. 163, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 163 inserted (2)(b) allowing an on-premises consumption licensee under 16-4-401(2) to buy table wine from a winery described in 16-3-411(2)(a); and made minor changes in style. Amendment effective March 28, 2001.

16-3-419. Suppliers' prohibitions. A supplier may not:

(1) coerce, induce, or attempt to coerce or induce a table wine distributor to engage in an illegal act or course of conduct;

(2) require a table wine distributor to accept delivery of a product or other item or commodity that was not ordered by the wine distributor;

(3) fix or maintain the price at which a distributor shall resell table wine.

History: En. Sec. 2, Ch. 314, L. 1991; amd. Sec. 2, Ch. 226, L. 1995.

16-3-420. Applicability. Within 60 days after October 1, 1991, or within 60 days after the execution of a new agreement by the parties, whichever is later, an agreement of distributorship must be reduced to writing and an exact copy of the agreement must be filed with the department as a public document and must be available to any of the parties to a dispute. Upon filing with the department, the agreement becomes subject to the provisions of 16-1-106, 16-3-401, and 16-3-415 through 16-3-421.

History: En. Sec. 6, Ch. 314, L. 1991.

16-3-421. Injunction. A person injured by a violation of this part may bring a civil action in a court of competent jurisdiction to enjoin further violations in addition to other remedies provided by law.

History: En. Sec. 7, Ch. 314, L. 1991.

Cross-References

Injunctions generally, Title 27, ch. 19.

CHAPTER 4

LICENSE ADMINISTRATION

Part 1 — Beer and Wine Licenses

16-4-101. Applications for sale, import, or manufacture of beer — qualifications of applicant.
16-4-102. Right of brewers to maintain and operate storage depots — annual licenses.
16-4-103. Wholesalers' licenses — application for and issuance — subwarehouses — imported beer handled through warehouse or subwarehouse.
16-4-104. Beer retailer's license — application and issuance — check of alcoholic content by department.
16-4-105. Limit on retail beer licenses — wine license amendments — limitation on use of license — exceptions.
16-4-106. Beer and table wine license transfers.
16-4-107. Domestic winery license — winery and importer registration.
16-4-108. Table wine distributor's license.
16-4-109. Golf course beer and wine license.
16-4-110. Beer license for tribal alcoholic beverages licensee or enlisted men's, noncommissioned officers', or officers' club.
16-4-111. Catering endorsement for beer and wine licensees.
16-4-112 through 16-4-114 reserved.
16-4-115. Beer and wine licenses for off-premises consumption.

Part 2 — All-Beverages Licenses

16-4-201. All-beverages license quota.
16-4-202. Resort retail all-beverages licenses.
16-4-203. Determination of public convenience and necessity.
16-4-204. Transfer — catering endorsement.
16-4-205. Limit one license to person — business in name of licensee.
16-4-206. Renumbered 16-4-402(1) and (3) by Code Commissioner, 1979.
16-4-207. Notice of application — investigation — publication — protest.
16-4-208. Airport all-beverages license.
16-4-209. All-beverages license for tribal alcoholic beverages licensee or enlisted men's, noncommissioned officers', or officers' club.

16-4-210. Resort license — tour boat endorsement.

Part 3 — Special Licenses

16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine — application and issuance.
16-4-302. Passenger carrier licenses.
16-4-303. Special beer and table wine license for nonprofit arts organizations.
16-4-304. Seasonal beer and wine license for Yellowstone airport.
16-4-305. Montana heritage retail alcoholic beverage licenses — use — quota.

Part 4 — Licensing Criteria

16-4-401. License as privilege — criteria for decision on application.
16-4-402. Application — investigation.
16-4-403. Fingerprints required of licensees and mortgagees.
16-4-404. Protest period — contents of license — posting — privilege — transfer.
16-4-405. Denial of license.
16-4-406. Renewal — suspension or revocation — penalty.
16-4-407. Suspension or revocation of licenses.
16-4-408. Renewal of suspended licenses.
16-4-409. Repealed.
16-4-410. Repealed.
16-4-411. Appeals concerning alcoholic beverages laws.
16-4-412. Limits on concurrent applications.
16-4-413. Denial of application — five-year moratorium.
16-4-414 reserved.
16-4-415. Changes in business entity ownership — department approval required.
16-4-416. Ownership of liquor license by United States
16-4-417 through 16-4-419 reserved.
16-4-420. Restaurant beer and wine license.
16-4-421. Denial of restaurant beer and wine license.
16-4-422. Sale of beer and wine prohibited during certain hours.
16-4-423. Restaurant beer and wine license — prohibited practices.

Part 5 — Licensing Fees

16-4-501. License and permit fees.
16-4-502. Census.
16-4-503. City and county licenses — fees.

Parts 6 and 7 reserved

Part 8 — Liquor License Security Interest

16-4-801. Security interest in liquor license.

Part 9 — Connoisseur's Licenses

16-4-901. Connoisseur's licenses — application — fees.
16-4-902. Payment of taxes — authority of department.
16-4-903. Direct shipment of beer or wine — limitations.
16-4-904 and 16-4-905 reserved.
16-4-906. Out-of-state brewery or winery registration — limitation on shipping — penalty.
16-4-907 through 16-4-909 reserved.
16-4-910. Penalty for noncompliance.

Chapter Cross-References

Appropriate alcoholic beverage license for certain gambling activities, 23-5-119.
Discrimination in licensing, 49-3-204.

Part 1
Beer and Wine Licenses

Part Cross-References

Security interest in liquor license, 16-4-801.
Appropriate alcoholic beverage license for certain gambling activities, 23-5-119.

16-4-101. Applications for sale, import, or manufacture of beer — qualifications of applicant. (1) Any person desiring to manufacture, import, or sell beer under the provisions of this code shall first apply to the department for a license to do so and pay with such application the license fee prescribed. The department shall require of such applicant satisfactory evidence that the applicant is of good moral character and a law-abiding person.

(2) Upon being satisfied, from such application or otherwise, that such applicant is qualified, the department shall issue such license to such person, which license shall be at all times prominently displayed in the place of business of such applicant.

(3) If the department shall find that such applicant is not qualified, no license shall be granted and such license fee shall be returned.

History: En. Sec. 6, Ch. 106, L. 1933; re-en. Sec. 2815.15, R.C.M. 1935; Sec. 4-310, R.C.M. 1947; amd. and redes. 4-4-101 by Sec. 50, Ch. 387, L. 1975; R.C.M. 1947, 4-4-101; amd. Sec. 19, Ch. 19, L. 1985.

16-4-102. Right of brewers to maintain and operate storage depots — annual licenses. It shall be lawful for any brewer duly licensed to manufacture beer, upon the payment to the department of an annual license fee in addition to all other fees and taxes required to be paid by such brewer for each storage depot, to own, lease, maintain, and operate, in any city or town in the state of Montana, a building for use as a storage depot, equipped with refrigeration and cooling apparatus, for receiving, handling, and storing beer therein and distributing and selling beer therefrom, as brewers are permitted to sell and distribute beer under the provisions of this code.

History: En. Sec. 6, Ch. 166, L. 1951; Sec. 4-317.1, R.C.M. 1947; amd. and redes. 4-4-102 by Sec. 54, Ch. 387, L. 1975; R.C.M. 1947, 4-4-102; amd. Sec. 3, Ch. 178, L. 1983.

16-4-103. Wholesalers' licenses — application for and issuance — subwarehouses — imported beer handled through warehouse or subwarehouse. (1) Any person desiring to sell and distribute beer as a wholesaler under the provisions of this code shall apply to the department for a license to do so and tender with his application the license fee provided for, and the department is hereby empowered, authorized, and directed to issue wholesale licenses to qualified applicants in accordance with the provisions of this code. Such license shall be at all times prominently displayed in the place of business of such wholesaler.

(2) An applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house, or warehouse for the receiving of, storage, handling, and moving of beer in large and jobbing quantities for distribution and sale in original packages to other licensed wholesalers or licensed retailers. Each wholesaler is entitled to only one wholesale license, which license shall be issued for his principal place of business in Montana. A duplicate license may be issued for one subwarehouse only, in Montana, for each wholesale licensee. The duplicate license shall at all times be prominently displayed at said subwarehouse.

(3) If the applicant is a foreign corporation, the corporation must be authorized to do business in Montana.

(4) As used in subsection (1), "distribute" has the meaning given to it in 16-3-218.

History: En. Sec. 14, Ch. 106, L. 1933; amd. Sec. 5, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.23, R.C.M. 1935; amd. Sec. 1, Ch. 246, L. 1947; amd. Sec. 5, Ch. 166, L. 1951; amd. Sec. 1, Ch. 222, L. 1965; Sec. 4-318, R.C.M. 1947; amd. and redes. 4-4-103 by Sec. 56, Ch. 387, L. 1975; R.C.M. 1947, 4-4-103(part); amd. Sec. 1, Ch. 359, L. 1981; amd. Sec. 6, Ch. 61, L. 1987.

Compiler's Comments

Effect on Existing Licenses: Section 4, Ch. 359, L. 1981, provided: "The provisions of this act do not affect the validity of any alcoholic beverage license that permits on-premises consumption and that has been issued prior to the effective date of this act [October 1, 1981] or the reissuance of the license."

16-4-104. Beer retailer's license — application and issuance — check of alcoholic content by department. (1) Any person desiring to possess and have beer for sale under the provisions of this code for the purpose of selling it at retail shall first apply to the department for a permit to do so and tender with such application the license fee provided for.

(2) Upon being satisfied, from such application or otherwise, that the applicant is qualified as provided, the department shall issue a license to such person, which license shall at all times be prominently displayed in the place of business of the applicant.

(3) If the department shall find that the applicant is not qualified, no license shall be granted and the license fee tendered shall be returned by the department.

(4) The department shall have the right and is hereby given authority to make, at any time, an examination of the books of account of any such retailer and of his premises and

otherwise check his methods of conducting business and the alcoholic content of the beer kept by him for sale.

(5) A person may not sell beer at retail without a valid license issued under this code.

History: En. Sec. 28, Ch. 106, L. 1933; amd. Sec. 9, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.30, R.C.M. 1935; Sec. 4-327, R.C.M. 1947; amd. and redes. 4-4-104 by Sec. 62, Ch. 387, L. 1975; R.C.M. 1947, 4-4-104.

16-4-105. Limit on retail beer licenses — wine license amendments — limitation on use of license — exceptions. (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of the towns, not more than one retail beer license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities or towns, one retail beer license for every 500 inhabitants;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for every additional 2,000 inhabitants;

(b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns, governs the number of retail beer licenses that may be issued for use within the cities and towns and within a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles from their respective corporate limits must be determined on the basis of the combined populations of both municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

(c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in violation of the limitations;

(d) the limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits or for use at premises situated within any unincorporated area must be determined by the department in its discretion, except that a retail beer license may not be issued for any premises so situated unless the department determines that the issuance of the license is required by public convenience and necessity pursuant to 16-4-203. Subsection (3) does not apply to licenses issued under this subsection (1)(e). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The department may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. Except for beer and wine licenses issued pursuant to 16-4-420, a person holding a beer and wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine amendment license.

(3) (a) Except as provided in subsections (1)(e) and (3)(b), a license issued pursuant to this section after October 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling is conducted.

(b) Subsection (3)(a) does not apply to licenses issued under this section if the department received the application before October 1, 1997. For the purposes of this subsection (3)(b), the application is received by the department before October 1, 1997, if the application's mail cover is postmarked by the United States postal service before October 1, 1997, or if the application was consigned to a private courier service for delivery to the department before October 1, 1997. An applicant who consigns an application to a private courier shall provide to the department, upon demand, documentary evidence satisfactory to the department that the application was consigned to a private courier before October 1, 1997.

History: En. Sec. 14, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.36, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955; amd. Sec. 1, Ch. 205, L. 1959; amd. Sec. 1, Ch. 271, L. 1965; amd. Sec. 1, Ch. 31, L. 1974; Sec. 4-333, R.C.M. 1947; amd. and redes. 4-4-201 by Sec. 66, Ch. 387, L. 1975; amd. Sec. 5, Ch. 496, L. 1977; R.C.M. 1947, 4-4-201(1), (3), (4); amd. Sec. 12, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 1, Ch. 25, L. 1981; amd. Sec. 1, Ch. 86, L. 1981; amd. Sec. 2, Ch. 519, L. 1981; amd. Sec. 1, Ch. 50, L. 1983; amd. Sec. 2, Ch. 595, L. 1983; amd. Sec. 3, Ch. 731, L. 1985; amd. Sec. 2, Ch. 228, L. 1995; amd. Sec. 35, Ch. 530, L. 1995; amd. Sec. 6, Ch. 465, L. 1997; amd. Sec. 1, Ch. 528, L. 1997; amd. Sec. 23, Ch. 7, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 7 in (2) at beginning of second sentence substituted "department" for "division". Amendment effective October 1, 2001.

1985 Amendments — Effective Date and Applicability: In (1)(c) after "March 7, 1947", inserted "and retail beer licenses issued under 16-4-110"; and in (1)(d) after "retail beer license to", inserted "an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to".

Section 8, Ch. 731, L. 1985, provided: "This act is effective on passage and approval [approved May 13, 1985] and applies only to tribal licensees who hold tribal licenses issued prior to January 1, 1985, and to enlisted men's, noncommissioned officers', and officers' clubs located on state and federal military reservations in Montana on May 13, 1985."

16-4-106. Beer and table wine license transfers. A transfer of any brewer's, beer wholesaler's, table wine distributor's, beer retailer's, or table wine retailer's license may be made on application to the department with the consent of the department, provided that the transferee qualifies under this code.

History: En. Sec. 45, Ch. 106, L. 1933; amd. Sec. 15, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.44, R.C.M. 1935; amd. Sec. 2, Ch. 246, L. 1947; amd. Sec. 1, Ch. 122, L. 1963; Sec. 4-341, R.C.M. 1947; amd. and redes. 4-4-401 by Sec. 68, Ch. 387, L. 1975; amd. Sec. 10, Ch. 496, L. 1977; R.C.M. 1947, 4-4-401(1)(b); amd. Sec. 13, I.M. No. 81, app. Nov. 7, 1978.

16-4-107. Domestic winery license — winery and importer registration. (1) (a) Wine, other than for personal consumption in conformity with federal exemptions from holding a basic permit as a bonded winery, may be manufactured within the state only by a licensed domestic winery. An application for a domestic winery license must be accompanied by a fee of $400, which constitutes the first annual license fee, and a licensee shall in each succeeding year pay an annual fee as provided in 16-4-501. Domestic winery licensees shall hold the appropriate basic permit required by the United States department of the treasury and be qualified for a license in accordance with the provisions of 16-4-401(4).

(b) A domestic winery licensed to do business in the state shall, each quarter and in the manner and form prescribed by the department, report to the department the amount of wine manufactured or imported by the winery in the previous quarter and the winery's inventory. The department may at any time examine a winery's books.

(2) A winery that is not located in the state or an importer of table wines that holds the appropriate license from the United States of America and that desires to distribute its table wines within this state shall apply to the department of revenue for registration on forms to be prepared and furnished by the department. Each winery will furnish the department with a copy of each container label currently used by the winery on its products imported into Montana. The department shall require the winery or importer to agree to furnish monthly and other reports concerning quantities and prices of table wine it ships into the state, names and addresses of consignees, and any other information that the department may determine to be necessary to ensure that importation and distribution of table wines within this state conform to the requirements of this code. A winery or importer of table wines may not ship table wines into this state until the registration is granted by the department. The registration may be canceled or suspended by the department upon a finding after notice and hearing that the registrant has not complied with the terms of its registration.

History: En. Sec. 3, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 70, Ch. 575, L. 1981; amd. Sec. 3, Ch. 163, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 163 inserted (1) allowing manufacture of wine in the state only by a licensed domestic winery, other than wine for personal consumption under federal exemptions, setting the initial and annual license fees, requiring the winery to hold the permit required by the U.S. treasury department, requiring quarterly reports to the department of revenue, and allowing the department of revenue to examine the winery's books at any time; in (2) near beginning of first sentence inserted "that is not located in the state"; and made minor changes in style. Amendment effective March 28, 2001.

16-4-108. Table wine distributor's license. (1) Any person desiring to sell and distribute table wine at wholesale to retailers under the provisions of this code shall apply to the department of revenue for a license to do so and shall tender with his application the annual license fee of $400 and the department may issue licenses to qualified applicants in accordance with the provisions of this code.

(2) All table wine distributors' licenses issued in any year expire on June 30 at midnight of such year.

(3) No license fee may be imposed upon table wine distributors by a municipality or any other political subdivision of the state.

(4) The license shall be at all times prominently displayed in the place of business of such table wine distributor.

(5) An applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, and receiving house or warehouse for the receiving, storage, handling, and moving of table wine in large and jobbing quantities for distribution and sale in original packages to other licensed table wine distributors or licensed retailers. Each table wine distributor is entitled to only one wholesale table wine license, which license shall be issued for his principal place of business in Montana. A duplicate license may be issued for one subwarehouse only in Montana for each table wine distributor's license. The duplicate license shall at all times be prominently displayed at said subwarehouse. A table wine distributor may also hold a license to sell beer at wholesale but shall not hold or have any interest, direct or indirect, in any license to sell beer, table wine, or liquor at retail.

(6) If the applicant is a foreign corporation, the corporation must be authorized to do business in Montana.

(7) As used in subsection (1), "distribute" has the meaning given to it in 16-3-218.

History: En. Sec. 4, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 3, Ch. 699, L. 1979; amd. Sec. 2, Ch. 359, L. 1981; amd. Sec. 7, Ch. 61, L. 1987; amd. Sec. 23, Ch. 68, L. 1987.

Compiler's Comments

Effect on Existing Licenses: Section 4, Ch. 359, L. 1981, provided: "The provisions of this act do not affect the validity of any alcoholic beverage license that permits on-premises consumption and that has been issued prior to the effective date of this act [October 1, 1981] or the reissuance of the license."

16-4-109. Golf course beer and wine license. (1) Upon application, the department of revenue shall issue a retail beer and wine license, to be known as a golf course beer and wine license, for use at a golf course. If the owner of the golf course is not the state, a unit of the university system, or a local government, to qualify for a license under this section:

(a) the golf course must consist of at least 18 holes and 6,000 lineal yards;

(b) the golf course must be either within the limits of an incorporated city or town or within 1 mile of the limits of an incorporated city or town; and

(c) the applicant for a license under this section may not have held a beer and wine or all-beverages license within 12 months of the date of application.

(2) The application must be made by the person or entity that owns and operates the golf course. If the owner of the golf course is not the state, a unit of the university system, or a local government, the owner must be approved by the department as provided in this chapter for the issuance of beer licenses.

(3) (a) Except as provided in subsection (3)(c), a golf course beer and wine license and all retail beer and wine sales under the license are subject to all statutes and rules governing a retail beer license with a wine license amendment.

(b) If the owner of the golf course is not the state, a unit of the university system, or a local government:

(i) retail beer and wine sales may be made only during the time of the year that the golf course is open for business, and sales on days during that time must stop by 1 hour after sunset;

(ii) the seating capacity of the premises where the beer and wine are sold may not exceed 75 persons; and

(iii) gaming or gambling is not authorized under the license issued under this section.

(c) If the owner of a golf course is the state, a unit of the university system, or a local government, the owner may lease the beer and wine license for use at the golf course to an individual or entity approved by the department of revenue.

(4) The department of revenue shall issue a golf course beer and wine license to a qualified applicant regardless of the number of beer and wine licenses already issued within the beer and wine license quota area in which the golf course is situated. A license issued pursuant to this section is nontransferable.

History: En. Sec. 1, Ch. 537, L. 1983; amd. Sec. 1, Ch. 117, L. 1985; amd. Sec. 1, Ch. 458, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 458 in (1) near middle of first sentence before "golf course" deleted "publicly owned" and at end after "golf course" deleted "owned by the state, a unit of the university system, or a local government" and inserted second sentence and (1)(a) through (1)(c) establishing license qualifications for privately owned golf course; in (2) in first sentence near middle substituted "person or entity" for "state agency, unit of the university system, or local government" and at end before "golf course" deleted "public" and substituted second sentence concerning department approval of owner for former sentence that read: "The owner may lease the license for use at the golf course to an individual or entity approved by the department"; at beginning of (3)(a) substituted exception clause for "A publicly owned"; inserted (3)(b) concerning restrictions at privately owned golf course; inserted (3)(c) concerning lease of publicly owned golf course beer and wine license; in (4) in first sentence near beginning before "golf course" deleted "publicly owned"; and made minor changes in style. Amendment effective April 30, 2001.

16-4-110. Beer license for tribal alcoholic beverages licensee or enlisted men's, noncommissioned officers', or officers' club. (1) Upon application and qualification, the department shall issue a license to sell beer for consumption on the premises to:

(a) a tribal alcoholic beverages licensee who operates such business within the exterior boundaries of a Montana Indian reservation under a tribal license issued prior to January 1, 1985;

(b) an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation in Montana on May 13, 1985.

(2) A license issued under the provisions of subsection (1) is not subject to the quota limitations of 16-4-105.

(3) Upon application and approval by the department, a license issued under subsection (1)(a) may be transferred to another qualified applicant, but only to a location within the quota area and the exterior boundaries of the Montana Indian reservation for which the license was originally issued.

(4) A license issued under this section is subject to all statutes and rules governing licenses to sell beer at retail for on-premises consumption.

History: En. Sec. 1, Ch. 731, L. 1985.

Compiler's Comments

Effective Date — Applicability: Section 8, Ch. 731, L. 1985, provided: "This act is effective on passage and approval [approved May 13, 1985] and applies only to tribal licensees who hold tribal licenses issued prior to January 1, 1985, and to enlisted men's, noncommissioned officers', and officers' clubs located on state and federal military reservations in Montana on May 13, 1985."

16-4-111. Catering endorsement for beer and wine licensees. (1) (a) A person who is engaged primarily in the business of providing meals with table service and who is licensed to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the department, be granted a catering endorsement to the license to allow the catering and sale of beer or beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(b) A person who is licensed pursuant to 16-4-420 to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the department, be granted a catering endorsement to the license to allow the catering and sale of beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine, along with food equal in cost to 65% of the total gross revenue from the catering contract, for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(2) A written application for a catering endorsement and an annual fee of $200 must be submitted to the department for its approval.

(3) A licensee who holds a catering endorsement may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(4) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises that the catered event is to be held. A fee of $35 must accompany the notice.

(5) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(6) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises sale of beer or beer and wine on premises where the event is to be held.

(7) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

History: En. Sec. 1, Ch. 599, L. 1993; amd. Sec. 7, Ch. 465, L. 1997; amd. Sec. 1, Ch. 324, L. 1999; amd. Sec. 24, Ch. 7, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 7 in (1)(a) near middle of first sentence and in (1)(b) near middle of first sentence after "approval of the" substituted "department" for "liquor division". Amendment effective October 1, 2001.

16-4-112 through 16-4-114 reserved.

16-4-115. Beer and wine licenses for off-premises consumption. (1) A retail license to sell beer or table wine, or both, in the original packages for off-premises consumption may be issued only to a person, firm, or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer or table wine, or both, and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of licenses that the department may issue is not limited by the provisions of 16-4-105 but must be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny an application for any license or suspend or revoke any license for cause.

(2) Upon receipt of a completed application for a license under this section, accompanied by the necessary license fee as provided in 16-4-501, the department shall request that the department of justice make a background investigation of all matters relating to the application.

(3) Based on the results of the investigation or in exercising its sound discretion as provided in subsection (1), the department shall determine whether:

(a) the applicant is qualified to receive a license;

(b) the applicant's premises are suitable for the carrying on of the business; and

(c) the requirements of this code and the rules promulgated by the department are met and complied with.

(4) License applications submitted under this section are not subject to the provisions of 16-4-203 and 16-4-207.

(5) If the premises proposed for licensing under this section are a new or remodeled structure, the department may issue a conditional license prior to completion of the premises upon reasonable evidence that the premises will be suitable for the carrying on of business as a bona fide grocery store or a drugstore licensed as a pharmacy.

History: En. Sec. 1, Ch. 228, L. 1995; amd. Sec. 2, Ch. 528, L. 1997; amd. Sec. 1, Ch. 54, L. 1999.

Part 2
All-Beverages Licenses

Part Cross-References

Security interest in liquor license, 16-4-801.

Appropriate alcoholic beverage license for certain gambling activities, 23-5-119.

16-4-201. All-beverages license quota. (1) Except as otherwise provided by law, a license to sell liquor, beer, and table wine at retail (an all-beverages license) in accordance with the provisions of this code and the rules of the department may be issued to any person who is approved by the department as a fit and proper person to sell such beverages, except that the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities and towns shall be determined on the basis of population prescribed in 16-4-502 as follows:

(a) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than two retail licenses;

(b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 3,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities and towns, three retail licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

(c) in incorporated cities of over 3,000 inhabitants and within a distance of 5 miles from the corporate limits thereof, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500 inhabitants.

(2) The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined populations of both of such municipalities and may not exceed the foregoing limitations. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

(3) Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued under 16-4-209, which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations.

(4) Such limitations do not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail license to an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

(5) The number of retail all-beverages licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof may not be more than one license

for each 750 population of the county after excluding the population of incorporated cities and incorporated towns in such county.

History: En. Sec. 3, Ch. 84, L. 1937; amd. Sec. 1, Ch. 226, L. 1947; amd. Sec. 1, Ch. 164, L. 1949; amd. Sec. 1, Ch. 144, L. 1951; amd. Sec. 1, Ch. 56, L. 1955; amd. Sec. 1, Ch. 206, L. 1959; amd. Sec. 1, Ch. 217, L. 1963; amd. Sec. 1, Ch. 322, L. 1971; amd. Sec. 1, Ch. 340, L. 1974; Sec. 4-403, R.C.M. 1947; amd. and redes. 4-4-202 by Sec. 79, Ch. 387, L. 1975; amd. Sec. 6, Ch. 496, L. 1977; R.C.M. 1947, 4-4-202; amd. Sec. 2, Ch. 25, L. 1981; amd. Sec. 3, Ch. 519, L. 1981; amd. Sec. 3, Ch. 595, L. 1983; amd. Sec. 4, Ch. 731, L. 1985; amd. Sec. 24, Ch. 68, L. 1987.

Compiler's Comments

1985 Amendments — Effective Date and Applicability: In (3) after "March 7, 1947", inserted "and all-beverages licenses issued under 16-4-209"; and in (4) after "retail license to", inserted "an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to".

Section 8, Ch. 731, L. 1985, provided: "This act is effective on passage and approval [approved May 13, 1985] and applies only to tribal licensees who hold tribal licenses issued prior to January 1, 1985, and to enlisted men's, noncommissioned officers', and officers' clubs located on state and federal military reservations in Montana on May 13, 1985."

16-4-202. Resort retail all-beverages licenses. (1) It is the intent and purpose of this section to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail all-beverages licenses may be issued by the department under the terms of this section. In addition to the licenses set forth in this code, the department may issue one resort retail all-beverages license for the first 100 accommodation units and an additional license for each additional 50 accommodation units in a resort area. Regardless of how many resort area all-beverages licenses are issued, no more than 20 gambling machine permits may be issued for the resort area.

(2) (a) For the purposes of this section, "resort area" means a recreational facility meeting the qualifications determined by the department and as otherwise provided in this section.

(b) The term does not include any land or improvements that lie wholly within the boundaries of a quota area as described in 16-4-201(1).

(3) The department shall determine that the area for which licenses are to be issued is a resort area pursuant to rules.

(4) (a) In addition to the other requirements of this code, a resort area, for the purposes of qualification for the issuance of a resort retail all-beverages license, must:

(i) have a current actual valuation of resort or recreational facilities, including land and improvements, of not less than $500,000, at least half of which valuation must be for a structure or structures within the resort area;

(ii) be under the sole ownership or control of one person or entity at the time of the filing of the resort area plat referred to in subsection (5);

(iii) contain a minimum of 50 acres of land;

(iv) contain a minimum of 100 overnight guest accommodation units, each unit capable of being separately locked by the occupants and containing sleeping, bath, and toilet facilities; and

(v) provide on the grounds of the resort the recreational facilities that warrant the resort designation being granted.

(b) For the purposes of this section, "control" means land or improvements that are owned or that are held under contract, lease, option, or permit.

(5) The resort area must be determined by the resort area developer or landowner by a plat setting forth the resort area boundaries and designating the ownership of the lands within the resort area. The plat must be verified by the resort area developer or landowner and must be filed with the department prior to the filing of any applications for resort retail all-beverages licenses within the resort area. The plat must show the location and general design of the buildings and other improvements existing or to be built in the resort area. A master plan for the development of the resort area may be filed by the resort area developer in satisfaction of this section.

(6) Within 7 days after the plat is filed, the department shall schedule a public hearing to be held in the proposed area to determine whether the facility proposed by the resort area developer or landowner is a resort area. At least 30 days prior to the date of the hearing, the department shall publish notice of the hearing in a newspaper published in the county or

counties in which the resort area is located, once a week for 4 consecutive weeks. The notice must include a description of the proposed resort area. Each resort area developer or landowner shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publication.

(7) Any person may present, in person or in writing, a statement to the department at the hearing in opposition to or support of the plat.

(8) Within 30 days after the hearing, the department shall accept or reject the plat. If the plat is rejected, the department shall state its reasons and set forth the conditions, if any, under which the plat will be accepted. The decision of the department may be reviewed pursuant to the review procedure set forth in 16-4-406.

(9) Once filed with the department, the boundaries of a resort area may not be changed without:

(a) a hearing, noticed and conducted in the same manner as provided in subsections (6) and (7); and

(b) the prior approval of the department, determined according to public convenience and necessity.

(10) (a) When the department has accepted a plat and a given resort area has been determined, applications may be filed with the department for the issuance of resort retail all-beverages licenses within the resort area.

(b) Each applicant shall submit plans showing the location, appearance, and floor plan of the premises for which application for a resort retail all-beverages license is made.

(c) If an applicant otherwise qualifies for a resort retail all-beverages license but the premises to be licensed are still in construction or are otherwise incomplete at the time that application is made, the department shall issue a letter stating that the license will be issued at the time that the qualifications for a licensed premises have been met. The letter must set forth specific time limitations and requirements that the department may establish.

(11) In addition to the restrictions on sale or transfer of a license as provided in 16-4-204 and 16-4-404, a resort retail all-beverages license may not be sold or transferred for operation at a location outside of the boundaries of the resort area.

(12) A resort retail all-beverages license is not subject to the quota limitations set forth in 16-4-201, and if the requirements of this section have been met, a resort retail all-beverages license must be issued by the department on the basis that the department has determined that the license is justified by public convenience and necessity, in accordance with the procedure required in 16-4-207.

History: En. 4-4-204 by Sec. 81, Ch. 387, L. 1975; R.C.M. 1947, 4-4-204(part); amd. Sec. 2, Ch. 583, L. 1979; amd. Sec. 25, Ch. 68, L. 1987; amd. Sec. 1, Ch. 371, L. 1997; amd. Sec. 2, Ch. 487, L. 1997; amd. Sec. 40, Ch. 51, L. 1999; amd. Sec. 1, Ch. 325, L. 1999.

Cross-References

Contested cases — Montana Administrative Procedure Act, 2-4-102; Title 2, ch. 4, parts 6 and 7.

Resort tax, Title 7, ch. 6, part 15.

16-4-203. Determination of public convenience and necessity. (1) An original license issued pursuant to 16-4-104, 16-4-201, 16-4-202, or 16-4-208 or the transfer of location of an on-premises retail license may be approved if the department does not receive the minimum number of protests required for a public convenience and necessity determination pursuant to 16-4-207, in which case the application must be regarded as a prima facie showing of public convenience and necessity and no further determination of public convenience and necessity is allowed.

(2) (a) If the department receives at least the minimum number of protests required for a public convenience and necessity determination, as provided in 16-4-207, an application must be approved when evidence indicates that the issuance of an original license or transfer of location will materially promote the public's ability to engage in the licensed activity.

(b) The issuance of an original license or a transfer of location will materially promote the public's ability to engage in the licensed activity if:

(i) the applicant's history and experience demonstrate the capacity to operate the proposed license in a lawful manner;

(ii) the approval of the application for the premises at the proposed location is consistent with the public's demand or probable demand for the licensed activity that presently exists or is reasonably expected to exist within the next 5 years in the quota area where the proposed premises is located and in quota areas adjacent to the quota area where the proposed premises is located;

(iii) the approval of the application for the premises at the proposed location contributes to the public's ability to participate in the licensed activity throughout the quota area where the proposed premises is located and quota areas adjacent to the quota area where the proposed premises is located;

(iv) the approval of the application for the premises at the proposed location is consistent with adopted or pending planning, annexation, and zoning ordinances of local governments that confer or will confer jurisdiction over business and developments such as the proposed license in the quota area where the proposed premises is located and in quota areas adjacent to the quota area where the proposed premises is located.

(3) When determining whether or not an application is justified by public convenience and necessity, the department may:

(a) receive evidence at the public hearing specified in 16-4-207 only from the applicant, any protestors whose protests the department has accepted pursuant to 16-4-207, and any other person summoned or called by either a protestor or applicant;

(b) find that the application is justified by public convenience and necessity if the applicant has provided substantial credible evidence as provided for in this subsection (3) that shows that the department's approval of the application will materially promote the public's ability to engage in the licensed activity. The substantial credible evidence required must include a consideration of each of the components of materially promoting the public's ability to engage in the licensed activity as provided in subsection (2)(b).

(4) For the purposes of this section, the following definitions apply:

(a) "Confer or will confer jurisdiction" means the power or authority that a local government or an appointed subsidiary of a local government has or may obtain within 1 year from the date of the hearing to consider and adopt planning, annexation, or zoning ordinances.

(b) "Licensed activity" means the purchase of alcoholic beverages for on-premises consumption in a business licensed to sell alcoholic beverages at retail for on-premises consumption.

(c) "Pending planning, annexation, and zoning ordinances" means the ordinances of a local government or an appointed subsidiary of a local government that were publicly considered within the year preceding the date of the hearing or are presently being considered.

History: En. 4-403.1 by Sec. 2, Ch. 340, L. 1974; Sec. 4-403.1, R.C.M. 1947; redes. 4-4-205 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-4-205; amd. Sec. 4, Ch. 156, L. 1991; amd. Sec. 3, Ch. 528, L. 1997.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

16-4-204. Transfer — catering endorsement. (1) (a) Except as provided in subsection (1)(b), a license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred, exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

(B) in an incorporated city of more than 10,000 inhabitants and within a distance of 5 miles from its corporate limits by more than 43%; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license within an incorporated quota area may be transferred to a new ownership and to a new unincorporated location within the same county on application to and with consent of the department when the quota of the all-beverages licenses in the original quota area, exclusive of those issued under 16-4-209(1)(a) and (1)(b), exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(c) For 3 years after the transfer of a license between quota areas under subsection (1)(a), the license may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee.

(d) Once a license is transferred to a new quota area under subsection (1)(a), it may not be transferred to another quota area or back to the original quota area.

(e) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

(2) (a) Any all-beverages licensee is, upon the approval and in the discretion of the department, entitled to a catering endorsement to the licensee's all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages for on-premises consumption. The alcoholic beverages must be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) An all-beverages licensee who holds an endorsement granted under this subsection (2) may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(d) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises where the catered event is to be held. A fee of $35 must accompany the notice.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(g) A catering endorsement issued for the purpose of selling and serving beer at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

History: (4)(a), (b) of 4-4-206 En. Sec. 88, Ch. 387, L. 1975; R.C.M. 1947, 4-4-206(4)(a)(b)(part); amd. Sec. 1, Ch. 139, L. 1979; amd. Sec. 3, Ch. 25, L. 1981; amd. Sec. 1, Ch. 59, L. 1981; amd. Sec. 1, Ch. 512, L. 1981; amd. Sec. 1, Ch. 29, L. 1983; amd. Sec. 1, Ch. 37, L. 1983; amd. Sec. 1, Ch. 59, L. 1983; amd. Sec. 1, Ch. 636, L. 1983; amd. Sec. 5, Ch. 731, L. 1985; amd. Sec. 1, Ch. 34, L. 1987; amd. Sec. 3, Ch. 180, L. 1987; amd. Sec. 2, Ch. 599, L. 1993; amd. Sec. 25, Ch. 7, L. 2001; amd. Sec. 1, Ch. 85, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 7 in (2)(a) near beginning of first sentence after "discretion of the" substituted "department" for "liquor division"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 85 at beginning of (1)(c) substituted "3 years" for "5 years"; and made minor changes in style. Amendment effective March 19, 2001.

1985 Amendments — Effective Date and Applicability: In (1)(a)(ii) and (1)(b) inserted "exclusive of those issued under 16-4-209(1)(a) and (1)(b)"; and inserted (1)(e).

Section 8, Ch. 731, L. 1985, provided: "This act is effective on passage and approval [approved May 13, 1985] and applies only to tribal licensees who hold tribal licenses issued prior to January 1, 1985, and to enlisted men's, noncommissioned officers', and officers' clubs located on state and federal military reservations in Montana on May 13, 1985."

16-4-205. Limit one license to person — business in name of licensee. (1) A person may not be issued more than one all-beverages license in any year, with the exception of a secured party issued an additional all-beverages license as the result of a default. A secured party shall transfer ownership of any additional all-beverages license within 180 days of issuance. A business may not be carried on under any license issued under this chapter except in the name of the licensee.

(2) The provisions of this section do not apply to licenses held by the Montana heritage preservation and development commission under the provisions of 16-4-305.

History: En. Sec. 9, Ch. 84, L. 1937; Sec. 4-411, R.C.M. 1947; amd. and redes. 4-4-207 by Sec. 89, Ch. 387, L. 1975; R.C.M. 1947, 4-4-207; amd. Sec. 1, Ch. 82, L. 1985; amd. Sec. 3, Ch. 251, L. 1999.

Cross-References

Secured transactions, Title 30, ch. 9A.

16-4-206. Renumbered 16-4-402(1) and (3) by Code Commissioner, 1979.

16-4-207. Notice of application — investigation — publication — protest. (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the location of a retail license, the department shall review the application for completeness and, based upon review of the application and any other information supplied to the department, determine whether the applicant or the premises to be licensed meets criteria provided by law. The department may make one request for additional information necessary to complete the application. The application is considered complete when the applicant furnishes the application information requested by the department. If the applicant does not provide the additional application information within 30 days of the department's request, the department shall terminate the application and return it to the applicant with an explanation of why the application was terminated. The terminated application is not a denial, and the premises identified in the application are not subject to the provisions of 16-4-413. An applicant whose application is terminated may subsequently submit a new application. When the application is complete, the department shall request that the department of justice investigate the application as provided in 16-4-402. When the department determines that an application for a license under this code is complete, the department shall publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that the applicant has made application for a retail on-premises license or a transfer of location and that protests may be made against the approval of the application by a person who has extended credit to the transferor or by residents of the county from which the application comes or adjoining Montana counties. Protests may be mailed to a named administrator in the department of revenue within 10 days after the final notice is published. Notice of application for a new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of ownership or location of a license must be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL
ALL-BEVERAGES LICENSE

Notice is given that on the .... day of ...., 20..., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue to be used at (describe location of premises where beverages are to be sold). A person who has extended credit to the transferor and residents of ...... counties may protest against the approval of the application. Each protestor is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures of persons opposing the approval of an application may not be considered as a protest. Protests may be mailed to ...., department of revenue, Helena, Montana, on or before the .... day of ...., 20...

Dated ....

Signed

....

ADMINISTRATOR

(2) Each applicant shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) (a) If the administrator receives no written protests, the department may approve the application without holding a public hearing.

(b) A response to a notice of opportunity to protest an application may not be considered unless the response is a letter satisfying all the requirements contained in the notice in subsection (1).

(c) If the department receives sufficient written protests that satisfy the requirements in subsection (1) against the approval of the application, the department shall hold a public hearing as provided in subsection (4).

(4) (a) If the department receives at least one protest but less than the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c), the department shall schedule a public hearing to be held in Helena, Montana, to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405, exclusive of public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(b) If the department receives the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c) and the application is for an original license or for a transfer of location, the department shall schedule a public hearing to be held in the county of the proposed location of the license to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405 including public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(c) The minimum number of protests necessary to initiate a public hearing to determine whether an application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the proposed premises located within a quota area described in 16-4-201 must be 25% of the quota for all-beverages licenses determined for that quota area according to 16-4-201(1), (2), and (5) but in no case less than two. The minimum number of protests determined in this manner will apply only to applications for either on-premises consumption beer or all-beverages licenses.

History: En. Sec. 1, Ch. 202, L. 1951; amd. Sec. 1, Ch. 145, L. 1965; Sec. 4-407.1, R.C.M. 1947; amd. and redes. 4-4-302 by Sec. 84, Ch. 387, L. 1975; amd. Sec. 8, Ch. 496, L. 1977; R.C.M. 1947, 4-4-302(part); amd. Sec. 1, Ch. 583, L. 1979; amd. Sec. 1, Ch. 445, L. 1983; amd. Sec. 1, Ch. 231, L. 1989; amd. Sec. 5, Ch. 156, L. 1991; amd. Sec. 5, Ch. 414, L. 1993; amd. Sec. 4, Ch. 528, L. 1997; amd. Sec. 41, Ch. 51, L. 1999; amd. Sec. 3, Ch. 448, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 448 in (1) in fourth sentence near middle after "information within" decreased time for applicant to provide additional application information from 60 to 30 days and at beginning of eighth sentence substituted "When the department determines that an application for a license under this code is complete" for "If the department does not discover a basis to deny the application within 30 days after the department requests the investigation by the department of justice". Amendment effective April 30, 2001.

16-4-208. Airport all-beverages license. (1) The department of revenue shall issue one all-beverages license, to be known as a public airport all-beverages license, for use at each publicly owned airport served by scheduled airlines and enplaning and deplaning a minimum total of 20,000 passengers annually when:

(a) application is made;

(b) upon finding that this license is justified by public convenience and necessity, including the convenience and necessity of the public traveling by scheduled airlines; and

(c) following a hearing as provided in 16-4-207.

(2) Application shall be made by the agency owning and operating the airport. The agency owning and operating the airport may lease the airport all-beverages license to an individual or entity approved by the department.

(3) A public airport all-beverages license and all retail alcoholic beverage sales thereunder shall be subject to all statutes and rules governing all-beverages licenses.

(4) The department of revenue shall issue a public airport all-beverages license to a qualified applicant regardless of the number of all-beverages licenses already issued within the all-beverages license quota area in which the airport is situated.

History: En. Sec. 1, Ch. 461, L. 1979; amd. Sec. 26, Ch. 68, L. 1987.

16-4-209. All-beverages license for tribal alcoholic beverages licensee or enlisted men's, noncommissioned officers', or officers' club. (1) Upon application and qualification, the department shall issue an all-beverages license to:

(a) a tribal alcoholic beverages licensee who operates such business within the exterior boundaries of a Montana Indian reservation under a tribal license issued prior to January 1, 1985;

(b) an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation in Montana on May 13, 1985.

(2) A license issued under the provisions of subsection (1) is not subject to the quota limitations of 16-4-201.

(3) Upon application and approval by the department, a license issued under subsection (1)(a) may be transferred to another qualified applicant, but such license may only be transferred to a location within the quota area and the exterior boundaries of the Montana Indian reservation for which the license was originally issued.

(4) A license issued under this section is subject to all statutes and rules governing all-beverages licenses.

History: En. Sec. 2, Ch. 731, L. 1985.

Compiler's Comments

Effective Date — Applicability: Section 8, Ch. 731, L. 1985, provided: "This act is effective on passage and approval [approved May 13, 1985] and applies only to tribal licensees who hold tribal licenses issued prior to January 1, 1985, and to enlisted men's, noncommissioned officers', and officers' clubs located on state and federal military reservations in Montana on May 13, 1985."

16-4-210. Resort license — tour boat endorsement. (1) A holder of a resort all-beverages license issued under 16-4-202 may be issued a tour boat endorsement to allow the sale of alcoholic beverages to passengers on boats at least 40 feet in length and equipped to carry at least 50 passengers.

(2) The endorsement must be issued upon written application to the department and submission of an annual fee of $200. The applicant must also submit proof:

(a) of compliance with the following requirements:

(i) county health department inspection and approval of food services offered on the boat;

(ii) inspection and approval by the department of fish, wildlife, and parks of boat safety equipment requirements;

(iii) current boat registration; and

(iv) business liability insurance coverage; and

(b) that the registered owner of the tour boat is:

(i) a resort all-beverages licensee;

(ii) an individual named on a resort all-beverages license; or

(iii) a stockholder owning 10% or more of any class of stock in a corporate resort all-beverages license.

(3) Alcoholic beverages may be sold pursuant to the endorsement authorized in subsection (1) only while the boat is underway within 30 miles of the resort boundary or is in preparation for scheduled departure. Except as provided in this subsection, no alcoholic beverages may be sold or served when the boat is secured at its or any other mooring.

(4) Sale of alcoholic beverages under the endorsement is subject to all other requirements imposed for any all-beverages license issued under this part.

History: En. Sec. 1, Ch. 149, L. 1989.

Cross-References

Boats — certificate of ownership, 23-2-508, 23-2-510.

Boat safety equipment requirements, 23-2-521.

Part 3
Special Licenses

Part Cross-References

Security interest in liquor license, 16-4-801.

16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine — application and issuance. (1) (a) Any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event is, in the discretion of the department, entitled to a special permit to sell beer and table wine to the patrons of that event, and except as provided in subsection (1)(c), the beer and wine must be consumed within the enclosure in which the event is held.

(b) The application of the association or corporation must be presented 3 days in advance and must describe the location of the enclosure where the event is to be held, the nature of the event, and the period during which it is contemplated that the event will be held. The application must be accompanied by the amount of the permit fee and a written statement of approval of the premises where the event is to be held issued by the local law enforcement agency that has jurisdiction over the premises where the event is to be held.

(c) The permit issued to the association or corporation is a special permit but does not authorize the sale of beer and table wine except starting 1 day before the regular period when events are being held upon the grounds, during the period described in the application, and for 1 day after the period described in the application.

(d) A special permit issued under this subsection (1) for the purpose of selling and serving beer at an event conducted on the premises of a county fairground or public sports arena authorizes the permitholder to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(e) For the purposes of this subsection (1), a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization otherwise licensed under this code is an association entitled to special permits for three events a year as described in subsection (1)(a) to sell beer and table wine. All net proceeds must go to the post or lodge acquiring the special permit.

(2) (a) A post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization not otherwise licensed under this code is, in the discretion of the department, without notice or hearing as provided in 16-4-207, entitled to a special permit to sell beer and table wine or a special permit to sell all alcoholic beverages at the post or lodge to members and their guests only, to be consumed within the hall or building of the post or lodge.

(b) The application of a nationally chartered veterans' organization or lodge of a recognized national fraternal organization must describe the location of the hall or building where the special permit will be used and the date it will be used.

(c) The special permit may be issued for a 24-hour period only, ending at 2 a.m., and the department may not issue more than 12 special permits to any post or lodge during a calendar year.

History: En. Sec. 13, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.35, R.C.M. 1935; amd. Sec. 1, Ch. 235, L. 1963; amd. Sec. 1, Ch. 285, L. 1974; Sec. 4-332, R.C.M. 1947; amd. and redes. 4-4-105 by Sec. 65, Ch. 387, L. 1975; amd. Sec. 4, Ch. 496, L. 1977; R.C.M. 1947, 4-4-105; amd. Sec. 1, Ch. 401, L. 1981; amd. Sec. 2, Ch. 37, L. 1983; amd. Sec. 2, Ch. 34, L. 1987; amd. Sec. 2, Ch. 180, L. 1987; amd. Sec. 26, Ch. 7, L. 2001; amd. Sec. 1, Ch. 89, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 7 near middle of (1)(a) substituted "department" for "liquor division"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 89 in (1)(a) near end after "event" inserted "and except as provided in subsection (1)(c), the beer and wine must" and after "held" deleted "except as provided in subsection (1)(d)"; inserted (1)(e) authorizing special permits under certain circumstances to be issued to certain organizations to sell beer and wine at three events a year; and made minor changes in style. Amendment effective March 20, 2001.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

16-4-302. Passenger carrier licenses. Common carriers serving Montana may serve alcoholic beverages to passengers in aircraft over or railroad cars in the state of Montana upon the issuance of a retail all-beverages license by the department for that purpose. Such licenses shall be issued on an annual basis to common carriers making application therefor and shall be effective from July 1 of the current year to July 1 of the following year.

History: En. 4-4-109 by Sec. 114, Ch. 387, L. 1975; R.C.M. 1947, 4-4-109(part); amd. Sec. 27, Ch. 68, L. 1987.

Cross-References

Regulation of carriers of passengers, Title 69, ch. 11, part 2.

16-4-303. Special beer and table wine license for nonprofit arts organizations. (1) A nonprofit arts organization as defined in subsection (4) is entitled to a special beer and table wine license to sell beer and table wine to patrons of exhibitions, productions, performances, or programs sponsored or presented by the organization in a specific theatre or other appropriately designated place for on-premises consumption.

(2) The proceeds derived from sales of beer and table wine, except for reasonable operating costs, must be used to further the purposes of the organization.

(3) The department shall have access to the organization's records to determine whether the organization is entitled to a license under this section.

(4) For the purposes of this section, the term "nonprofit arts organization" means an organization governed under Title 35, chapter 2, that is organized and operated for the principal purpose of providing artistic or cultural exhibitions, presentations, or performances for viewing or attendance by the general public. Assets of the corporation must be irrevocably dedicated to the activities for which the license is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of a member or individual except a nonprofit organization, association, or corporation. An artistic or cultural exhibition, presentation, or performance includes:

(a) an exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums; and

(b) a musical or dramatic performance or series of performances.

(5) A license issued under this section is not subject to the provisions of 16-4-105.

History: En. Sec. 1, Ch. 380, L. 1987.

16-4-304. Seasonal beer and wine license for Yellowstone airport. (1) Upon application, the department of revenue shall issue a retail beer and wine license to the Yellowstone airport, which is an airport near West Yellowstone, Montana, owned by the state of Montana and operated by the department of transportation.

(2) The application must be made by the department of transportation. The department of transportation may lease the license of use at the airport to an individual or entity approved by the department of revenue.

(3) The license is valid for the retail sale of beer and wine from June 1 to October 1 of each year.

(4) There is no annual fee for the license.

(5) The license issued pursuant to this section:

(a) is not subject to the quota provisions of 16-4-105;

(b) is nontransferable;

(c) does not permit gambling activities otherwise allowed under Title 23, part 5.

History: En. Sec. 1, Ch. 529, L. 1993.

16-4-305. Montana heritage retail alcoholic beverage licenses — use — quota. (1) (a) The Montana heritage preservation and development commission may use Montana heritage retail alcoholic beverage licenses within the quota area in which the licenses were originally issued, for the purpose of providing retail alcoholic beverage sales on property acquired by the state under Title 22, chapter 3, part 10. The licenses are to be considered when determining the appropriate quotas for issuance of other retail liquor licenses.

(b) The department may issue a wine amendment pursuant to 16-4-105(2) if the use of a Montana heritage retail alcoholic beverage license for the sale of beer meets all the requirements of that section.

(2) The Montana heritage preservation and development commission may lease a Montana heritage retail alcoholic beverage license to an individual or entity approved by the department.

(3) Montana heritage retail alcoholic beverage licenses are subject to all laws and rules governing the use and operation of retail liquor licenses.

(4) For the purposes of this section, "Montana heritage retail alcoholic beverage licenses" are all-beverages liquor licenses and retail on-premises beer licenses that have been transferred to the Montana heritage preservation and development commission under the provisions of section 2, Chapter 251, Laws of 1999.

History: En. Sec. 1, Ch. 251, L. 1999.

Part 4
Licensing Criteria

Part Cross-References

Video gaming machine licenses for alcoholic beverage licensees, 23-5-611.
Prohibition against discrimination in issuance of license, 49-3-204.

16-4-401. License as privilege — criteria for decision on application. (1) A license under this code is a privilege that the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in subsection (6), in the case of a license that permits on-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iv) the applicant is a resident of the state and is qualified to vote in a state election;

(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(vi) the applicant is not under 19 years of age; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (2)(a)(iv);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a);

(iii) each individual who has control over the operation of the license meets the requirements for an individual applicant listed in subsection (2)(a);

(iv) each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection (2)(b)(iv) does not apply to a shareholder of a corporation who owns less than 10% of the outstanding stock in that corporation.

(v) the corporation is authorized to do business in Montana; and

(vi) in the case of a corporation not listed on a national stock exchange, each owner of stock meets the requirements of subsections (2)(a)(i) and (2)(a)(ii); and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (2)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (2)(b).

(3) In the case of a license that permits only off-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored;

(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(vi) the applicant is not under 19 years of age; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (3)(a)(iv);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a); and

(iii) the corporation is authorized to do business in Montana; and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (3)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (3)(b).

(4) In the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic beverage, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant has no ownership interest in any establishment licensed under this chapter for retail alcoholic beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, rights have been restored;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments;

(v) the applicant is not under 19 years of age; and

(vi) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (4)(a)(iii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a);

(iii) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(iv) the corporation is authorized to do business in Montana; and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (4)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (4)(b).

(5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply separately to each class of stock.

(6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302.

History: En. Sec. 10, Ch. 84, L. 1937; amd. Sec. 1, Ch. 76, L. 1945; amd. Sec. 1, Ch. 244, L. 1947; amd. Sec. 1, Ch. 10, L. 1957; Sec. 4-412, R.C.M. 1947; amd. and redes. 4-4-108 by Sec. 90, Ch. 387, L. 1975; R.C.M. 1947, 4-4-108; amd. Sec. 2, Ch. 186, L. 1979; amd. Sec. 3, Ch. 359, L. 1981; amd. Sec. 1, Ch. 178, L. 1983; amd. Sec. 20, Ch. 19, L. 1985; amd. Sec. 1, Ch. 133, L. 1985; amd. Sec. 28, Ch. 68, L. 1987; amd. Sec. 36, Ch. 530, L. 1995; amd. Sec. 2, Ch. 148, L. 1999; amd. Sec. 4, Ch. 448, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 448 in (2)(b)(iii) after "license" deleted "or shares in the profits or liabilities of the license"; inserted (2)(b)(iv) requiring each person who shares in the profits or liabilities of a license, other than a shareholder owning less than 10% of a corporation's stock, to meet certain requirements for individual license applicants; and made minor changes in style. Amendment effective April 30, 2001.

Effect on Existing Licenses: Section 4, Ch. 359, L. 1981, provided: "The provisions of this act do not affect the validity of any alcoholic beverage license that permits on-premises consumption and that has been issued prior to the effective date of this act [October 1, 1981] or the reissuance of the license."

Cross-References

Age of majority, Art. II, sec. 14, Mont. Const.
Criminal justice policy — rights of convicted, Art. II, sec. 28, Mont. Const.
Rules for determining residence, 1-1-215.
Voter qualifications, 13-1-111.

16-4-402. Application — investigation. (1) Prior to the issuance of a license under this chapter, the applicant shall file with the department an application containing information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by the department.

(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department shall request that the department of justice make a thorough investigation of all matters relating to the application. Based on the results of the investigation or on other information, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) the applicant's premises are suitable for the carrying on of the business; and

(iii) the requirements of this code and the rules promulgated by the department are met and complied with.

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204(2), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a special permit provided in 16-4-301.

(c) For an original license application and an application for transfer of location of a license, the department of justice's investigation and the department's determination under this subsection (2) must be completed within 90 days of the request from the department to the department of justice. If information is requested from the applicant by either department, the time period in this subsection (2)(c) is tolled until the requested information is received by the requesting department. The basis for the tolling of the deadline must be documented.

(3) Upon proof that an applicant made a false statement in any part of the original application, in any part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for the license may be denied, and if issued, the license may be revoked.

(4) The department shall issue a conditional approval letter upon the last occurrence of either:

(a) completion of the investigation and determination provided for in subsection (2) if the department has not received information that would cause the department to deny the application; or

(b) a final agency decision that either denies or dismisses a protest against the approval of an application pursuant to 16-4-207.

(5) The conditional approval letter must state the reasons upon which the future denial of the application may be based. The reasons for denial of the application after the issuance of the conditional approval letter are as follows:

(a) there is false or erroneous information in the application;

(b) the premises are not approved by local building, health, or fire officials;

(c) there are physical changes to the premises that if known prior to the issuance of the conditional approval letter would have constituted grounds for the denial of the application or denial of the issuance of the conditional approval; or

(d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the department's final agency decision provided for in subsection (4).

History: (1), (3)En. Sec. 5, Ch. 84, L. 1937; amd. Sec. 2, Ch. 221, L. 1939; amd. Sec. 2, Ch. 163, L. 1941; Sec. 4-407, R.C.M. 1947; amd. and redes. 4-4-301 by Sec. 83, Ch. 387, L. 1975; amd. Sec. 7, Ch. 496, L. 1977; Sec. 4-4-301, R.C.M. 1947; Sec. 16-4-206, MCA 1979; (2)En. Sec. 6, Ch. 84, L. 1937; Sec. 4-408, R.C.M. 1947; amd. and redes. 4-4-303 by Sec. 85, Ch. 387, L. 1975; amd. Sec. 9, Ch. 496, L. 1977; Sec. 4-4-303, R.C.M. 1947; redes. 16-4-402(1) and (3) by Code Commissioner, 1979; amd. Sec. 1, Ch. 18, L. 1979; amd. Sec. 3, Ch. 37, L. 1983; amd. Sec. 1, Ch. 51, L. 1983; amd. Sec. 6, Ch. 156, L. 1991; amd. Sec. 6, Ch. 414, L. 1993; amd. Sec. 4, Ch. 599, L. 1993; amd. Sec. 3, Ch. 228, L. 1995; amd. Sec. 5, Ch. 528, L. 1997; amd. Sec. 2, Ch. 54, L. 1999.

16-4-403. Fingerprints required of licensees and mortgagees. All applicants for a Montana retail all-beverages or beer license, including corporate officers and managers, may be required by the department or the department of justice to have their fingerprints taken for use in determining the eligibility of the applicant for the license. This provision applies to all who file a security interest against the license except banks, savings and loan institutions, and licensed lending agencies.

History: Ap. p. Sec. 1, Ch. 487, L. 1973; Sec. 4-408.1, R.C.M. 1947; amd. and redes. 4-4-304 by Sec. 86, Ch. 387, L. 1975; Sec. 4-4-304, R.C.M. 1947; Ap. p. Sec. 2, Ch. 487, L. 1973; Sec. 4-408.2, R.C.M. 1947; redes. 4-4-305 by Sec. 120, Ch. 387, L. 1975; Sec. 4-4-305, R.C.M. 1947; R.C.M. 1947, 4-4-304, 4-4-305; amd. Sec. 7, Ch. 414, L. 1993.

16-4-404. Protest period — contents of license — posting — privilege — transfer. (1) A license may not be issued until on or after the date set in the notice for hearing protests.

(2) Every license issued under this code must state the name of the person to whom it is issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under the license, and other information the department considers necessary. If the licensee is a partnership or if more than one person has an interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises in which the business authorized under the license is conducted, and the license must be exhibited upon request to any authorized representative of the department or the department of justice or to any peace officer of the state of Montana.

(3) A license issued under the provisions of this code is a privilege personal to the licensee named in the license and is valid until the expiration of the license unless sooner revoked or suspended.

(4) A license may be transferred to the executor or administrator of the estate of a deceased licensee when the estate consists in whole or in part of the business of selling alcoholic beverages under a license. The license may descend or be disposed of with the licensed business under appropriate probate proceedings.

(5) (a) A licensee may apply to the department for a transfer of the license to different premises within the quota area if:

(i) there has been major loss or damage to the licensed premises by unforeseen natural causes;

(ii) the lease of the licensed premises has expired;

(iii) in case of rented licensed premises, there has been an eviction or increase of rent by the landlord; or

(iv) the licensee has proposed removal of the license to premises that are as substantially suited for the retail alcoholic beverages business as the premises proposed to be vacated.

(b) The department may, after notice and opportunity for protest, permit a transfer in the cases specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the licensee applying for the transfer and the transfer is justified by public convenience and necessity, pursuant to 16-4-203, unless a public convenience and necessity hearing is required by 16-4-207. The department may not allow a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than facilities that exist or had existed at the premises from which the transfer is proposed to be made.

(6) Upon a bona fide sale of the business operated under a license, the license may be transferred to a qualified purchaser. A transfer of a license to a person or location is not effective unless approved by the department. A licensee or transferee or proposed transferee who operates or attempts to operate under a supposedly transferred license prior to the

approval of the transfer by the department, endorsed upon the license in writing, is considered to be operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval if there has not been a change in location and the application for transfer has been filed with the department.

(7) Except as provided in 16-4-204 and subsections (2) through (6) of this section, a license may not be transferred or sold or used for any place of business not described in the license. A license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license. Beer or wine sold to a licensee on credit pursuant to 16-3-243 or 16-3-406 does not create a lien upon a license, but a subsequent licensee has the obligation to pay for the beer or wine.

History: (1)En. Sec. 1, Ch. 202, L. 1951; amd. Sec. 1, Ch. 145, L. 1965; Sec. 4-407.1, R.C.M. 1947; amd. and redes. 4-4-302 by Sec. 84, Ch. 387, L. 1975; amd. Sec. 8, Ch. 496, L. 1977; R.C.M. 1947, 4-4-302(part); (2) thru (7) En. Sec. 8, Ch. 84, L. 1937; amd. Sec. 1, Ch. 97, L. 1951; Sec. 4-410, R.C.M. 1947; amd. and redes. 4-4-206 by Sec. 88, Ch. 387, L. 1975; R.C.M. 1947, 4-4-206(part); redes. from 16-4-204(1)-(5), (8) by Code Commissioner, 1983; amd. Sec. 29, Ch. 68, L. 1987; amd. Sec. 7, Ch. 156, L. 1991; amd. Sec. 1, Ch. 311, L. 1993; amd. Sec. 8, Ch. 414, L. 1993; amd. Sec. 6, Ch. 528, L. 1997.

Cross-References

Mortgages generally, Title 71, ch. 1.
Liens generally, Title 71, ch. 3, part 1.

16-4-405. Denial of license. (1) The department may deny the issuance of a retail alcoholic beverages license if it determines that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(2) A retail license may not be issued by the department for a premises situated within a zone of a city, town, or county where the sale of alcoholic beverages is prohibited by ordinance, a certified copy of which has been filed with the department.

(3) A license under this code may not be issued if the department finds from the evidence at the hearing held pursuant to 16-4-207(3) that:

(a) the welfare of the people residing or of retail licensees located in the vicinity of the premises for which the license is desired will be adversely and seriously affected;

(b) if required, there is not a public convenience and necessity justification pursuant to 16-4-203;

(c) the applicant or the premises proposed for licensing fail to meet the eligibility or suitability criteria established by this code;

(d) a possible reason for denial listed in a conditional approval letter, as provided in 16-4-402, has been verified; or

(e) the purposes of this code will not be carried out by the issuance of the license.

History: (1), (2)En. Sec. 14, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.36, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955; amd. Sec. 1, Ch. 205, L. 1959; amd. Sec. 1, Ch. 271, L. 1965; amd. Sec. 1, Ch. 31, L. 1974; Sec. 4-333, R.C.M. 1947; amd. and redes. 4-4-201 by Sec. 66, Ch. 387, L. 1975; amd. Sec. 5, Ch. 496, L. 1977; Sec. 4-4-201, R.C.M. 1947; (3)En. Sec. 1, Ch. 202, L. 1951; amd. Sec. 1, Ch. 145, L. 1965; Sec. 4-407.1, R.C.M. 1947; amd. and redes. 4-4-302 by Sec. 84, Ch. 387, L. 1975; amd. Sec. 8, Ch. 496, L. 1977; Sec. 4-4-302, R.C.M. 1947; R.C.M. 1947, 4-4-201(part), 4-4-302(part); amd. Sec. 30, Ch. 68, L. 1987; amd. Sec. 8, Ch. 156, L. 1991; amd. Sec. 7, Ch. 528, L. 1997.

Cross-References

Sales prohibited by ordinance, 16-3-309.
Nuisances and their abatement, Title 27, ch. 30.
Disorderly conduct, 45-8-101.
Maintaining public nuisance, 45-8-111.

16-4-406. Renewal — suspension or revocation — penalty. (1) The department may upon its own motion and shall upon a written, verified complaint of a person request that the department of justice investigate the action and operation of a brewer, winery, wholesaler, or retailer licensed under this code.

(2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the department, after receiving the results of the department of justice's investigation, has reasonable cause to believe that a licensee has violated a provision of this code or a rule of the department, it may, in its discretion and in addition to the other penalties prescribed:

(a) reprimand a licensee;
(b) proceed to revoke the license of the licensee;
(c) suspend the license for a period of not more than 3 months;
(d) refuse to grant a renewal of the license after its expiration; or
(e) impose a civil penalty not to exceed $1,500.

(3) If the department, after receiving the results of the department of justice's investigation, has reasonable cause to believe that a licensee does not meet the eligibility criteria established by this code or rules of the department or that the premises are not suitable pursuant to the provisions of this code or rules of the department, it may, in its discretion, proceed to revoke the license of the licensee or it may refuse to grant renewal of the license subject to the opportunity of the licensee to contest the action at a hearing under the Montana Administrative Procedure Act.

History: En. Sec. 46, Ch. 106, L. 1933; re-en. Sec. 2815.45, R.C.M. 1935; amd. Sec. 8, Ch. 166, L. 1951; Sec. 4-342, R.C.M. 1947; amd. and redes. 4-4-402 by Sec. 69, Ch. 387, L. 1975; R.C.M. 1947, 4-4-402; amd. Sec. 9, Ch. 156, L. 1991; amd. Sec. 9, Ch. 414, L. 1993; amd. Sec. 4, Ch. 163, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 163 in (1) added "winery" to the list of entities that may be investigated. Amendment effective March 28, 2001.

Cross-References

Hearing under Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

16-4-407. Suspension or revocation of licenses. Each July 1 or, when applicable, on the licensee's anniversary date, the department shall issue licenses to brewers, wineries, beer importers, wholesalers, or retailers or for the retail sale of alcoholic beverages on an annual basis upon payment of the fees prescribed by law. The licenses are subject to suspension or revocation under 16-4-406 after midnight of June 30 of the succeeding year or 1 year after the anniversary if the annual renewal fees required by 16-4-501 are not paid. The department shall notify each applicant for an original license or renewal that it is the applicant's responsibility to determine if applicable provisions of federal law require the applicant to obtain a permit from a federal agency.

History: En. Sec. 2, Ch. 235, L. 1943; Sec. 4-406, R.C.M. 1947; amd. and redes. 4-4-404 by Sec. 82, Ch. 387, L. 1975; amd. Sec. 12, Ch. 496, L. 1977; R.C.M. 1947, 4-4-404; amd. Sec. 2, Ch. 29, L. 1983; amd. Sec. 21, Ch. 19, L. 1985; amd. Sec. 3, Ch. 54, L. 1999; amd. Sec. 5, Ch. 163, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 163 in first sentence added "wineries" to listed entities and near end substituted "upon payment of the fees" for "and with the fees"; and made minor changes in style. Amendment effective March 28, 2001.

16-4-408. Renewal of suspended licenses. After suspension or revocation of a license, the department shall have the power to renew the same if in its discretion a proper showing therefor has been made.

History: En. Sec. 27, Ch. 84, L. 1937; Sec. 4-429, R.C.M. 1947; amd. and redes. 4-4-405 by Sec. 102, Ch. 387, L. 1975; R.C.M. 1947, 4-4-405.

16-4-409. Repealed. Sec. 5, Ch. 595, L. 1983.

History: En. Sec. 5, Ch. 519, L. 1981.

16-4-410. Repealed. Sec. 5, Ch. 595, L. 1983.

History: En. Sec. 6, Ch. 519, L. 1981.

16-4-411. Appeals concerning alcoholic beverages laws. (1) Any interested party shall have the right to appeal any decision of the department of revenue concerning the issuance, transfer, suspension, or revocation of alcoholic beverages licenses to the district court in the county in which the issuance, transfer, suspension, or revocation occurred or, at the appellant's option, in the district court of the first judicial district.

(2) The appeal must be in conformity with the provisions of Title 2, chapter 4, part 7.

History: En. 82A-1808 by Sec. 2, Ch. 207, L. 1973; en. 82A-1808 by Sec. 64.1, Ch. 391, L. 1973; R.C.M. 1947, 82A-1808; amd. Sec. 1, Ch. 135, L. 1985; amd. Sec. 31, Ch. 68, L. 1987.

Cross-References

Contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, parts 6 and 7.

16-4-412. Limits on concurrent applications. (1) An application for the issuance of a new license or for the transfer of an existing license may not be considered by the department if a previous application for the same premises is pending. An application is considered pending if a final decision:

(a) has not been made by the department; or

(b) has been made by the department but:

(i) a petition for judicial review can still be filed or has been filed; or

(ii) an appeal to the Montana supreme court can still be filed or has been filed.

(2) This section does not prevent the department from considering more than one application for the same location pursuant to competition for a last available license.

History: En. Sec. 1, Ch. 156, L. 1991.

16-4-413. Denial of application — five-year moratorium. (1) If an application for the issuance of a new license or for the transfer of an existing license has been denied for any reason provided in 16-4-405, the department may not consider an application or issue any retail license, special permit, or special license for those premises for 5 years unless the department, using the criteria described in subsection (3), determines that the proposed use is substantially different from the use that was rejected. The prohibition period commences on the date of the final agency decision or, if judicially reviewed, on the date the judicial decision is final.

(2) If an application is withdrawn after a hearing has been held in which testimony is received regarding any reason for denial provided in 16-4-405, the effect of the withdrawal is the same as if a final decision had been made denying the application for any reason provided in 16-4-405. The 5-year prohibition against considering an application or issuing a license for that vicinity commences on the date of the withdrawal.

(3) The department shall determine whether a proposed use is substantially different by considering:

(a) the capacity of the proposed use;

(b) the nature of the establishment;

(c) the presence and character of any entertainment; and

(d) the characteristics of the neighborhood.

History: En. Sec. 2, Ch. 156, L. 1991.

16-4-414 reserved.

16-4-415. Changes in business entity ownership — department approval required. (1) In the case of corporate licensees, a person or entity that does not own stock or owns less than 10% of the stock in the corporation may not receive stock that results in the person or entity's share of stock in the corporation being 10% or greater unless the department reviews and determines that the person or entity qualifies for ownership of a liquor license as provided in 16-4-401.

(2) In the case of all other business entities, when a proposed transfer of ownership would result in a party who prior to the transfer owned no interest in the license owning an interest in the license, the proposed transfer must be submitted to the department for review. The proposed new party must qualify for ownership of a liquor license as provided in 16-4-401.

(3) In the case of a proposed change in business entity, the proposed new business entity shall apply for a transfer of ownership of the license with the department prior to changing the business entity. The proposed new business entity must qualify for ownership of a liquor license as provided in 16-4-401.

History: En. Sec. 1, Ch. 148, L. 1999.

16-4-416. Ownership of liquor license by United States. (1) Whenever right, title, and interest in a liquor license vests in the United States, the United States shall promptly give notice to the department of its interest and must have the license placed on nonuse status. The United States shall transfer ownership of the license to a qualified applicant within 200 days from the date on which it obtained an interest in the license. Upon receipt of an application to transfer the license, the department may, pursuant to 16-4-404, grant the applicant temporary authority to operate the license.

(2) The department, upon a showing of good cause, may in its discretion extend the time for sale of the license for an additional period of up to 180 days.

History: En. Sec. 1, Ch. 90, L. 2001.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

16-4-417 through 16-4-419 reserved.

16-4-420. Restaurant beer and wine license. (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) in the case of an individual applicant:

(i) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(ii) the applicant is not under 19 years of age;

(b) in the case of a corporate applicant:

(i) in the case of a corporation listed on a national stock exchange, the corporate officers and the board of directors must meet the requirements of subsection (1)(a);

(ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or more of the outstanding stock must meet the requirements for an individual listed in subsection (1)(a); and

(iii) the corporation is authorized to do business in Montana;

(c) in the case of any other business entity, including but not limited to partnerships, including limited liability partnerships, limited partnerships, and limited liability companies, but not including any form of a trust:

(i) if the applicant consists of more than one individual, all individuals must meet the requirements of subsection (1)(a); and

(ii) if the applicant consists of more than one corporation, all corporations listed on a national stock exchange must meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock exchange must meet the requirements of subsection (1)(b)(ii);

(d) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department that:

(i) the applicant intends to open a restaurant that will meet the requirements of subsection (6) and intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of operation is expected to be the result of the sale of food;

(ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be stated on the food bill; and

(iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule;

(e) the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and

(f) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.

(2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic beverage may not be considered for a restaurant beer and wine license at the same location.

(b) A restaurant that sells its existing retail license may not apply for a license under this section for a period of 1 year from the date that license is transferred to a new purchaser.

(3) (a) A completed application for a license under this section and the appropriate application fee, as provided in subsection (11), must be submitted to the department. The department shall request that the department of justice make an investigation of all the items relating to the application as described in subsections (3)(a)(i) through (3)(a)(iv). Based on the

results of the investigation or in exercising its sound discretion, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) the applicant's premises are suitable for the carrying on of the business;

(iii) the requirements of this code and the rules promulgated by the department are met and complied with; and

(iv) the seating capacity as stated on the application is correct.

(b) The department may retain 20% of the application fee collected under subsection (11) to defray the costs of the department and department of justice associated with investigating and processing applications.

(4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.

(5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a conditional license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6).

(6) For purposes of this section, "restaurant" means a public eating place where individually priced meals are prepared and served for on-premises consumption. At least 65% of the restaurant's annual gross income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of food. The restaurant must have a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use as a full-service restaurant. A full-service restaurant is a restaurant that provides an evening dinner meal.

(7) (a) (i) Subject to the conditions of subsection (7)(a)(ii), a restaurant beer and wine license may be transferred, upon approval by the department, from the original applicant to a new owner of the restaurant if there is no change of location, and the original owner may transfer location after the license is issued by the department to a new location, upon approval by the department.

(ii) A new owner may not transfer the license to a new location for a period of 1 year following the transfer of the license to the new owner.

(b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property upon the death of the owner in this state or in another state.

(c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of the department, transfer a restaurant beer and wine license to a new owner.

(8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) for a restaurant located in a quota area with a population of 20,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(ii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 50% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iii) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 40% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

(iv) for a restaurant located in a quota area that is also a resort community, as the resort community is designated by the department of commerce under 7-6-1501(5), if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(iii), the department shall round to the nearer whole number.

(c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under subsections (8)(a)(i) through (8)(a)(iii), there must be a one-time adjustment of one additional license for that quota area.

(d) If there are more applicants than licenses available in a quota area, then the license must be awarded by lottery as provided in subsection (9).

(9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in the quota area, the nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department shall advertise the availability of the license in the quota area for which it is available. If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery.

(b) Any applicant who operates a restaurant that meets the qualifications of subsection (6) for at least 12 months prior to the filing of an application must be given a preference, and any unsuccessful lottery applicants from previous selections must also be given a preference. An applicant with both preferences must be awarded a license before any applicant with only one preference.

(c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and a one-time required fee. An applicant's ranking may not be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the intended license advertised by the department or to the number of licenses determined under subsection (8) when there are more applicants than licenses available. The applicant's qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the time of the lottery.

(10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises consumption.

(11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies issuing a license to an applicant, the application fee, plus any interest, less a $100 processing fee, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

(a) $5,000 for restaurants with a stated seating capacity of 60 persons or less;

(b) $10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

(c) $20,000 for restaurants with a stated seating capacity of 101 persons or more.

(12) The annual fee for a restaurant beer and wine license is $400.

(13) If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the time of filing the original application and issuance of a license and the applicable fees for the additional seating.

(14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

(15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license.

History: En. Sec. 1, Ch. 465, L. 1997; amd. Sec. 2, Ch. 324, L. 1999; amd. Sec. 27, Ch. 7, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 7 in second sentence of (11) substituted "rate of 1% a month" for "rate set in 16-1-409(4)"; and made minor changes in style. Amendment effective October 1, 2001.

Cross-References

Catering endorsement for restaurant beer and wine licensee, 16-4-111.

Appropriate alcoholic beverage license for certain gambling activities, 23-5-119.

16-4-421. Denial of restaurant beer and wine license. (1) A restaurant beer and wine license may not be issued by the department for a premises situated within a zone of a city, town, or county where the sale of alcoholic beverages is prohibited by ordinance, a certified copy of which has been filed with the department.

(2) A restaurant beer and wine license may not be issued or renewed if the department finds, subject to the opportunity for a hearing pursuant to Title 2, chapter 4, part 6, that the applicant or the premises proposed for licensing fail to meet the eligibility or suitability criteria provided by law.

History: En. Sec. 2, Ch. 465, L. 1997.

16-4-422. Sale of beer and wine prohibited during certain hours. Except as provided in 16-3-305, restaurants licensed pursuant to 16-4-420 in which beer and wine are sold, offered for sale, or given away at retail may not serve beer and wine between the hours of 11 p.m. and 11 a.m. However, if an incorporated city or town has by ordinance further restricted the hours of sale of beer and wine, then the sale of beer and wine in restaurants licensed to sell beer and wine, pursuant to 16-4-420, is prohibited within the limits of the city or town during the time that the sale is prohibited by this section and in addition to the hours that the sale is prohibited by ordinance.

History: En. Sec. 3, Ch. 465, L. 1997.

16-4-423. Restaurant beer and wine license — prohibited practices. A restaurant licensed for the sale of beer and wine pursuant to 16-4-420 may not convey to any person by any means that a person may either purchase or consume beer or wine on the premises without being required to purchase food.

History: En. Sec. 4, Ch. 465, L. 1997.

Part 5

Licensing Fees

16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay a license fee. Unless otherwise specified in this section, the fee is an annual fee and is imposed as follows:

(a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, $500;

(ii) for each storage depot, $400;

(b) (i) each beer wholesaler, $400; each domestic winery producing more than 25,000 gallons of wine, $400; each domestic winery producing 25,000 gallons or less of wine, $200; each table wine distributor, $400;

(ii) for each subwarehouse, $400;

(c) each beer retailer, $200;

(d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license;

(ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the rate of $10 a day for each day that beer and table wine are sold at those events lasting 2 or more days, but the fee may not exceed $300 for a series of scheduled sporting events.

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is $200.

(6) The annual renewal fee for:

(a) a brewer producing 20,000 or fewer barrels of beer, as defined in 16-1-406, is $200; and

(b) resort retail all-beverages licenses within a given resort area is $2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as provided in this section, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) except as provided in this section, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

(c) except as provided in this section, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsections (6) and (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a $20,000 license fee. A successful applicant shall pay a one-time original license fee of $20,000 for a license issued. The one-time license fee of $20,000 may not apply to any transfer or renewal of a license issued prior to July 1, 1974. All licenses, however, are subject to the specified annual renewal fees.

(8) The fee for one all-beverages license to a public airport is $800. This license is nontransferable.

(9) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is $250.

(10) The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

(11) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 ⅓% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary date, 66 ⅔% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1 year and 2 months after the licensee's anniversary date.

(12) All license and permit fees collected under this section must be deposited as provided in 16-2-108.

History: (1) thru (5), (9)En. Sec. 45, Ch. 106, L. 1933; amd. Sec. 15, Ch. 46, Ex. L. 1933; re-en, Sec. 2815.44, R.C.M. 1935; amd. Sec. 2, Ch. 246, L. 1947; amd. Sec. 1, Ch. 122, L. 1963; Sec. 4-341, R.C.M. 1947; amd. and redes. 4-4-401 by Sec. 68, Ch. 387, L. 1975; amd. Sec. 10, Ch. 496, L. 1977; Sec. 4-4-401, R.C.M. 1947; (6)En. 4-4-204 by Sec. 81, Ch. 387, L. 1975; Sec. 4-4-204, R.C.M. 1947; (7)En. Sec. 4, Ch. 84, L. 1937; amd. Sec. 1, Ch. 221, L. 1939; amd. Sec. 1, Ch. 163, L. 1941; amd. Sec. 1, Ch. 211, L. 1943; amd. Sec. 1, Ch. 236, L. 1947; amd. Sec. 1, Ch. 356, L. 1974; Sec. 4-404, R.C.M. 1947; R.C.M. 1947, 4-404(part), 4-4-204(part), 4-4-401(part); amd. Sec. 13, I.M. No. 81, app. Nov. 7, 1978; (8)En. Sec. 2, Ch. 461, L. 1979; amd. Sec. 1, Ch. 181, L. 1981; amd. Sec. 2, Ch. 401, L. 1981; amd. Sec. 4, Ch. 519, L. 1981; amd. Sec. 3, Ch. 29, L. 1983; amd. Sec. 2, Ch. 51, L. 1983; amd. Sec. 4, Ch. 595, L. 1983; amd. Sec. 22, Ch. 19, L. 1985; amd. Sec. 2, Ch. 141, L. 1985; amd. Sec. 32, Ch. 68, L. 1987; amd. Sec. 2, Ch. 380, L. 1987; amd. Sec. 21, Ch. 83, L. 1989; amd. Sec. 2, Ch. 225, L. 1989; amd. Sec. 2, Ch. 371, L. 1997; amd. Sec. 8, Ch. 528, L. 1997; amd. Sec. 4, Ch. 54, L. 1999; amd. Sec. 6, Ch. 163, L. 2001; amd. Sec. 2, Ch. 405, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 163 in (1)(b) inserted "each domestic winery producing more than 25,000 gallons of wine, $400; each domestic winery producing 25,000 gallons or less of wine, $200". Amendment effective March 28, 2001.

Chapter 405 in (1) in first sentence before "license fee" deleted "annual" and in second sentence inserted "Unless otherwise specified in this section, the fee is an annual fee and is imposed"; inserted (6)(a) regarding brewer producing 20,000 or fewer barrels of beer; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 4, Ch. 405, L. 2001, provided: "[This act] applies to beer sold by a wholesaler on or after July 1, 2001."

16-4-502. Census. The census taken under the direction of congress shall be the basis upon which the respective populations of the counties and incorporated cities or towns shall be determined. However, in the interim between censuses, the department shall use as such basis the most recent population estimates published by the bureau of the census, United States department of commerce.

History: En. Sec. 4, Ch. 84, L. 1937; amd. Sec. 1, Ch. 221, L. 1939; amd. Sec. 1, Ch. 163, L. 1941; amd. Sec. 1, Ch. 211, L. 1943; amd. Sec. 1, Ch. 236, L. 1947; amd. Sec. 1, Ch. 356, L. 1974; Sec. 4-404, R.C.M. 1947; amd. and redes. 4-4-403 by Sec. 119, Ch. 387, L. 1975; amd. Sec. 11, Ch. 496, L. 1977; R.C.M. 1947, 4-4-403; amd. Sec. 4, Ch. 25, L. 1981.

16-4-503. City and county licenses — fees. The city council of any incorporated town or city or the county commissioners outside of any incorporated town or city may provide for the issuance of licenses to persons to whom a retail license has been issued under the provisions of this code and may fix license fees, not to exceed a sum equal to five-eighths of the fee for an all-beverages license or 100% of the fee for a beer or beer and wine license collected by the department from such licensee under this code.

History: En. Sec. 28, Ch. 84, L. 1937; Sec. 4-430, R.C.M. 1947; amd. and redes. 4-4-406 by Sec. 103, Ch. 387, L. 1975; amd. Sec. 1, Ch. 509, L. 1977; R.C.M. 1947, 4-4-406.

Cross-References

Functions, powers, and duties of Department, 16-1-302.

Department rules governing conduct, management, and equipment of licensed premises, 16-1-303.

Parts 6 and 7 reserved

Part 8
Liquor License Security Interest

16-4-801. Security interest in liquor license. (1) (a) A security interest in a liquor license is an interest in the liquor license that secures payment or performance of an obligation. A contract for the sale of a liquor license, including a provision allowing the seller to retain an ownership interest in the license solely for the purpose of guaranteeing payment for the license, may, for the purposes of this section, be treated as a security interest.

(b) For the purposes of this section:

(i) "default" means that:

(A) the defaulting party has acknowledged in writing pursuant to the terms of a written security agreement or contract for sale that the defaulting party no longer has any ownership interest or any other rights to possess or control the liquor license; or

(B) a court of competent jurisdiction has made an order foreclosing all of the defaulting party's interests in the license; and

(ii) "liquor license" means a license issued under this chapter.

(2) The department, after review of the underlying documents creating the security interest, may approve a transfer of ownership of a liquor license subject to a security interest as provided in subsection (1). A person holding a security interest may not have any control in the operation of the business operated under a license subject to a security interest nor may that person share in the profits or the liabilities of the business other than the payment or performance of the licensee's obligation under a security agreement.

(3) (a) Within 7 days of a default by a licensee, the person holding the security interest shall give notice to the department of the licensee's default and either apply to have the license transferred to that person, subject to that person meeting the requirements of 16-4-401 and all other applicable provisions of this code, or the person shall place the license on nonuser status. Upon receipt of an application to transfer the license, the department may, pursuant to 16-4-404, grant the applicant temporary authority to operate the license. If the person holding the license places the license on nonuser status, the person shall transfer ownership of the license within 180 days from the date on which the notice of the default was given to the department. The operation of a business under a license by a person holding a security interest for more than 7 days after default of the licensee or without temporary authority issued by the department must be considered to be a violation of this code and constitutes grounds for the department to either deny an application for transfer of the license or for the revocation of the license pursuant to 16-4-406.

(b) If the person holding the security interest does not qualify for or cannot qualify for ownership of a liquor license under 16-4-401, the secured party shall transfer ownership of the liquor license within 180 days of the notice of the default of the licensee.

(c) The department, upon a showing of good cause, may in its discretion extend the time for sale of the license for an additional period of up to 180 days.

History: **En. Sec. 1, Ch. 280, L. 1999.**

Part 9
Connoisseur's Licenses

Part Compiler's Comments

Effective Date: Section 13(2), Ch. 543, L. 2001, provided that this part is effective October 1, 2001.

16-4-901. Connoisseur's licenses — application — fees. (1) A person in this state desiring to receive direct shipments of beer only, wine only, or both beer and wine from an out-of-state brewery or winery for the person's own consumption and not for resale shall file with the department an application for a connoisseur's license. The application must be accompanied by a registration fee in the amount of:

(a) $50 for a beer connoisseur's license;

(b) $50 for a wine connoisseur's license; or

(c) $100 for a beer and wine connoisseur's license.

(2) Each application for a license must be on a form prescribed by the department and must set forth the name of the applicant, the applicant's home or business address, proof that the applicant is at least 21 years of age, and other information that the department may require.

(3) A connoisseur's license expires on June 30 of each calendar year. A licensee may annually renew a license with the department by paying a $25 renewal fee for a beer connoisseur's license or a wine connoisseur's license and a $50 renewal fee for a beer and wine connoisseur's license.

(4) The holder of a connoisseur's license may not sell beer or wine to the public.

(5) The department shall adopt rules to provide procedures for the application for and the provision of a connoisseur's license.

History: En. Sec. 7, Ch. 543, L. 2001.

16-4-902. Payment of taxes — authority of department. (1) A person holding a connoisseur's license shall pay, on June 30 and December 31, the beer and wine taxes imposed by Title 16, chapter 1, part 4, on beer or wine that is received by direct shipment from an out-of-state brewery or winery during the previous 6-month period.

(2) Each holder of a connoisseur's license shall file with the department a return, on a form provided by the department, and pay the tax for shipments received.

History: En. Sec. 8, Ch. 543, L. 2001.

16-4-903. Direct shipment of beer or wine — limitations. (1) Subject to the provisions of 16-4-901, the holder of a connoisseur's license may receive up to 144 bottles or 12 cases of wine or 288 bottles or 12 cases of beer from an out-of-state brewery or winery during a 12-month period for personal use and not for resale. A person wishing to receive both wine and beer under this section must possess a beer and wine connoisseur's license.

(2) A licensee under this section shall forward to the out-of-state brewery or winery a distinctive address label, provided by the department, clearly identifying any package that is shipped as a legal direct-shipment package to the holder of a connoisseur's license.

(3) A licensee shall report to the department, on June 30 and December 31, the total amount of beer or wine received from an out-of-state brewery or winery and pay all applicable excise taxes, as provided for in Title 16, chapter 1, part 4, imposed on the receipt of beer or wine during the previous 6 months.

History: En. Sec. 9, Ch. 543, L. 2001.

16-4-904 and 16-4-905 reserved.

16-4-906. Out-of-state brewery or winery registration — limitation on shipping — penalty. (1) Each out-of-state brewery or winery desiring to ship beer or wine to a person holding a connoisseur's license shall register with the department on forms provided by the department.

(2) The annual limit on out-of-state shipments to all connoisseur's license holders is:

(a) 1,440 bottles or 60 cases of beer for breweries; and

(b) 720 bottles or 60 cases of wine for wineries.

(3) For any shipment into the state that exceeds the limits provided for in subsection (2), the out-of-state brewery or winery shall distribute the brewery's or winery's product through a licensed wholesale distributor.

(4) An out-of-state brewery or winery that violates the provisions of this section is subject to the penalties provided for in 16-6-302.

History: En. Sec. 10, Ch. 543, L. 2001.

16-4-907 through 16-4-909 reserved.

16-4-910. Penalty for noncompliance. (1) Except as provided in 16-4-906, a person who violates the provisions of this part commits a civil offense.

(2) A person convicted under subsection (1):

(a) for a first offense, must be mailed a certified letter by the department ordering that person to cease and desist committing the violation;

(b) for a second offense, shall be fined a civil penalty not to exceed $500; and

(c) for a third or subsequent offense, shall be fined a civil penalty not to exceed $2,500.

History: En. Sec. 11, Ch. 543, L. 2001.

CHAPTER 5

IDENTIFICATION CARDS
(Repealed. Sec. 2, Ch. 26, L. 1979)

Chapter Compiler's Comments

Histories of Repealed Sections:

16-5-101. En. Sec. 1, Ch. 190, L. 1957; amd. Sec. 8, Ch. 240, L. 1971; amd. Sec. 9, Ch. 94, L. 1973; Sec. 4-506, R.C.M. 1947; redes. 4-5-101 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-5-101.

16-5-102. En. Sec. 2, Ch. 190, L. 1957; Sec. 4-507, R.C.M. 1947; amd. and redes. 4-5-102 by Sec. 106, Ch. 387, L. 1975; R.C.M. 1947, 4-5-102.

16-5-103. En. Sec. 3, Ch. 190, L. 1957; Sec. 4-508, R.C.M. 1947; amd. and redes. 4-5-103 by Sec. 107, Ch. 387, L. 1975; R.C.M. 1947, 4-5-103.

16-5-104. En. Sec. 4, Ch. 190, L. 1957; Sec. 4-509, R.C.M. 1947; amd. and redes. 4-5-104 by Sec. 108, Ch. 387, L. 1975; R.C.M. 1947, 4-5-104.

16-5-105. En. Sec. 5, Ch. 190, L. 1957; amd. Sec. 1, Ch. 272, L. 1973; Sec. 4-510, R.C.M. 1947; amd. and redes. 4-5-105 by Sec. 109, Ch. 387, L. 1975; amd. Sec. 13, Ch. 496, L. 1977; R.C.M. 1947, 4-5-105.

16-5-106. En. Sec. 7, Ch. 190, L. 1957; Sec. 4-512, R.C.M. 1947; redes. 4-5-106 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-5-106.

CHAPTER 6

ENFORCEMENT

Part 1 — Investigations

16-6-101. Employment of investigators and prosecuting officers.
16-6-102. Search warrants.
16-6-103. Examination of retailer's premises and carriers' cars and aircraft.
16-6-104. Unlawful alcoholic beverage — seizure — forfeiture.
16-6-105. Seizure and forfeiture of alcoholic beverage and conveyance.
16-6-106. When force may be used in seizure of alcoholic beverages — forfeiture — hearing.
16-6-107. Disposal of forfeited alcoholic beverages — report.
16-6-108. Inspection of carriers' records.
16-6-109. Unlawful for carrier to refuse inspection of records.

Part 2 — Prosecutions

16-6-201. Jurisdiction of courts.
16-6-202. Appeal.
16-6-203. Description of offense.
16-6-204. Defense need not be negatived.
16-6-205. Sufficiency of evidence.
16-6-206. Proof of violation.
16-6-207. Analyst's report as prima facie evidence of contents.
16-6-208. Inference of intoxicating beverage.
16-6-209. Inferences of fact from evidence found.

Part 3 — Miscellaneous Prohibitions and Penalties

16-6-301. Transfer, sale, and possession of alcoholic beverages — when unlawful.
16-6-302. Sale of alcoholic beverage without license — sale or importation in violation of code — penalty.
16-6-303. Sale of liquor not purchased from agency liquor store forbidden — penalty.
16-6-304. Providing alcoholic beverage to intoxicated person prohibited.
16-6-305. Age limit for sale or provision of alcoholic beverages — liability of provider.
16-6-306. Bottle clubs prohibited.
16-6-307. Consumption of alcoholic beverage on druggists' premises prohibited.
16-6-308. Patent medicine prohibition.
16-6-309. Alcoholic beverages administered to institution inmates.
16-6-310. Officer or agent of corporation deemed party to offense.
16-6-311. Occupant of premises deemed party to offense.
16-6-312. Premises where alcoholic beverages illegally sold public nuisance.
16-6-313. Injunction actions.
16-6-314. Penalty for violating code — revocation of license — penalty for violation by underage person.

Part 1
Investigations

16-6-101. Employment of investigators and prosecuting officers. (1) The department of justice may appoint one or more investigators or prosecuting officers who, under its direction, shall perform the duties it may require.

(2) When requested by the department, the department of justice shall:

(a) investigate the character of an applicant applying for the issuance or transfer of a liquor license and, if applicable, the suitability of a premises or proposed premises to be used in connection with a liquor license;

(b) investigate all matters relating to the purchase, sale, importation, exportation, possession, and delivery of alcoholic beverages; and

(c) serve as a liaison to local law enforcement authorities in matters relating to alcoholic beverage law enforcement.

History: En. Sec. 90, Ch. 105, L. 1933; re-en. Sec. 2815.150, R.C.M. 1935; Sec. 4-225, R.C.M. 1947; amd. and redes. 4-6-201 by Sec. 39, Ch. 387, L. 1975; R.C.M. 1947, 4-6-201; amd. Sec. 10, Ch. 414, L. 1993.

16-6-102. Search warrants. Upon information on oath by a department of justice investigator appointed under this code or by a peace officer showing reasonable cause to believe that alcoholic beverages are unlawfully kept, or kept for unlawful purposes, in any premises, a court may issue a warrant to authorize the investigator or peace officer or any other person named in the warrant to enter and search the entire premises, including to break open any door, lock, fastening, closet, cupboard, box, or other receptacle on the premises that might contain alcoholic beverages.

History: En. Sec. 74, Ch. 105, L. 1933; re-en. Sec. 2815.133, R.C.M. 1935; Sec. 4-208, R.C.M. 1947; amd. and redes. 4-6-203 by Sec. 25, Ch. 387, L. 1975; R.C.M. 1947, 4-6-203; amd. Sec. 11, Ch. 414, L. 1993.

Cross-References

Unreasonable searches and seizures, Art. II, sec. 11, Mont. Const.

Searches and seizures generally, Title 46, ch. 5.

16-6-103. Examination of retailer's premises and carriers' cars and aircraft. The department of justice or its representative or a peace officer may at any time examine the premises of a retail licensee to determine whether the law of Montana and the rules of the department or the department of justice are being complied with and also may inspect cars or aircraft of any common carrier system licensed under this code.

History: En. Sec. 26, Ch. 84, L. 1937; Sec. 4-428, R.C.M. 1947; amd. and redes. 4-6-204 by Sec. 101, Ch. 387, L. 1975; R.C.M. 1947, 4-6-204; amd. Sec. 12, Ch. 414, L. 1993.

Cross-References

Regulation of carriers of property, Title 69, ch. 11, part 4.

16-6-104. Unlawful alcoholic beverage — seizure — forfeiture. (1) Any investigator or peace officer who finds an alcoholic beverage which he has reasonable cause to believe is had or kept by any person in violation of the provisions of this code may forthwith seize and remove the same and the packages in which the alcoholic beverage is kept, and upon conviction of the person, the alcoholic beverage and all packages containing the same shall, in addition to any other penalty prescribed by this code, ipso facto be forfeited to the state of Montana.

(2) Any beer which has been shipped into Montana and has not been shipped to and distributed from a warehouse of a licensed wholesaler shall be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of alcoholic beverages.

History: (1)En. 4-6-205 by Sec. 22, Ch. 387, L. 1975; amd. Sec. 15, Ch. 496, L. 1977; Sec. 4-6-205, R.C.M. 1947; (2)En. Sec. 14, Ch. 106, L. 1933; amd. Sec. 5, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.23, R.C.M. 1935; amd. Sec. 1, Ch. 246, L. 1947; amd. Sec. 5, Ch. 166, L. 1951; amd. Sec. 1, Ch. 222, L. 1965; Sec. 4-318, R.C.M. 1947; amd. and redes. 4-4-103 by Sec. 56, Ch. 387, L. 1975; Sec. 4-4-103, R.C.M. 1947; R.C.M. 1947, 4-4-103(part), 4-6-205; amd. Sec. 3, Ch. 47, L. 1983; amd. Sec. 33, Ch. 68, L. 1987.

Cross-References

Procedure in regard to seized property, Title 46, ch. 5, part 3.

16-6-105. Seizure and forfeiture of alcoholic beverage and conveyance. Whenever an investigator or any peace officer in making or attempting to make a search under and in pursuance of authority of law shall find in any motor vehicle, vessel, boat, canoe, or conveyance of any description an alcoholic beverage which is unlawfully kept or had or kept or held for unlawful purposes contrary to the provisions of this code, he may forthwith seize the alcoholic beverage and packages in which the same is contained and the motor vehicle, vessel, boat, canoe, or conveyance in which the alcoholic beverage is found. Upon the conviction of the occupant or person in charge of the motor vehicle, vessel, boat, canoe, or conveyance, or of any other person, for having or keeping such alcoholic beverages contrary to any of the provisions of this code in any such vehicle, vessel, boat, canoe, or conveyance, the court in which the conviction of any such person is had may, in addition to the sentence imposed under authority of law, declare the alcoholic beverage or any part thereof so seized and the package in which the same is contained to be forfeited to the state of Montana. The court may in and by decree further declare the motor vehicle, vessel, boat, canoe, or conveyance seized to be forfeited to the state of Montana.

History: En. Sec. 75, Ch. 105, L. 1933; re-en. Sec. 2815.134, R.C.M. 1935; Sec. 4-209, R.C.M. 1947; amd. and redes. 4-6-207 by Sec. 26, Ch. 387, L. 1975; R.C.M. 1947, 4-6-207.

Cross-References

Procedure in regard to seized property, Title 46, ch. 5, part 3.

16-6-106. When force may be used in seizure of alcoholic beverages — forfeiture — hearing. (1) If an alcoholic beverage is found by a department of justice investigator or a peace officer in any place in quantities that satisfy the investigator or peace officer that the alcoholic beverage is being kept contrary to this code, the investigator or peace officer may seize and remove, by force if necessary, any alcoholic beverage found and the packages in which the alcoholic beverage was kept and immediately turn the alcoholic beverage over to the department.

(2) The department shall determine if the seized alcoholic beverage is suitable for resale in an agency liquor store. If the department has determined that the seized alcoholic beverage is suitable for resale, the department shall commence an administrative action against the owner of the alcoholic beverage. All seized alcoholic beverages found to be unsuitable for sale in an agency liquor store must be destroyed by the department.

(3) A notice and opportunity for hearing must be given in accordance with the Montana Administrative Procedure Act, except that the notice must be published in the county where the alcoholic beverage was seized if a newspaper is published in the county.

(4) The notice must show the date and place of seizure, the name of the person or persons actually or apparently in possession or control of the alcoholic beverage if the person was present at the time of the seizure, and the reasons the department claims the right to the possession of the alcoholic beverage. The notice must also demand that all persons who claim any right to the possession of the alcoholic beverage show the nature of their claim or claims, that the hearing examiner declare the alcoholic beverage contraband, and that the hearing examiner order that the alcoholic beverage be forfeited to the state.

History: En. Sec. 76, Ch. 105, L. 1933; re-en. Sec. 2815.135, R.C.M. 1935; amd. Sec. 1, Ch. 140, L. 1945; Sec. 4-210, R.C.M. 1947; amd. and redes. 4-6-208 by Sec. 27, Ch. 387, L. 1975; R.C.M. 1947, 4-6-208; amd. Sec. 14, Ch. 20, L. 1985; amd. Sec. 1, Ch. 83, L. 1985; amd. Sec. 13, Ch. 414, L. 1993; amd. Sec. 92, Ch. 42, L. 1997.

16-6-107. Disposal of forfeited alcoholic beverages — report. (1) If a court or hearing examiner orders the forfeiture of alcoholic beverages under this code or if a claimant to an alcoholic beverage under 16-6-105 or 16-6-106 fails to establish the claimant's right to the alcoholic beverage, the alcoholic beverage in question and the packages in which the alcoholic beverage is kept must be delivered to the department. The department shall determine the market value of each forfeited alcoholic beverage found to be suitable for sale in agency liquor stores and shall pay the amount determined to the state treasurer after deducting any expenses incurred by the department for transporting the forfeited alcoholic beverage to the state liquor warehouse. The alcoholic beverage suitable for sale in an agency liquor store must be taken into stock by the department and sold under the provisions of this code. All alcoholic beverages found to be unsuitable for sale in agency liquor stores must be destroyed by the department.

(2) If an alcoholic beverage is seized by a peace officer, the officer shall report to the department in writing the particulars of the seizure.

History: **En. Sec. 77, Ch. 105, L. 1933; re-en. Sec. 2815.136, R.C.M. 1935; Sec. 4-211, R.C.M. 1947; amd. and redes. 4-6-209 by Sec. 28, Ch. 387, L. 1975; R.C.M. 1947, 4-6-209; amd. Sec. 2, Ch. 83, L. 1985; amd. Sec. 14, Ch. 414, L. 1993; amd. Sec. 37, Ch. 530, L. 1995.**

16-6-108. Inspection of carriers' records. For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this code, the department or the department of justice or any person appointed by either department in writing for the purpose may inspect the freight and express books and records and all waybills, bills of lading, receipts, and documents in the possession of any railway company, express company, or other common carrier doing business within the state containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within the state.

History: **En. Sec. 78, Ch. 105, L. 1933; re-en. Sec. 2815.137, R.C.M. 1935; Sec. 4-212, R.C.M. 1947; amd. and redes. 4-6-210 by Sec. 29, Ch. 387, L. 1975; R.C.M. 1947, 4-6-210; amd. Sec. 15, Ch. 414, L. 1993.**

Cross-References

Regulation of carriers of property, Title 69, ch. 11, part 4.

16-6-109. Unlawful for carrier to refuse inspection of records. Every railway company, express company, or common carrier and every officer or employee of a company or common carrier who neglects or refuses to produce and submit for inspection any book, record, or document referred to in 16-6-108 when requested to do so by the department or the department of justice or by a person appointed by either department is guilty of an offense against this code.

History: **En. Sec. 79, Ch. 105, L. 1933; re-en. Sec. 2815.138, R.C.M. 1935; Sec. 4-213, R.C.M. 1947; amd. and redes. 4-6-211 by Sec. 30, Ch. 387, L. 1975; R.C.M. 1947, 4-6-211; amd. Sec. 16, Ch. 414, L. 1993.**

Cross-References

Penalty, 16-6-314.

Part 2
Prosecutions

16-6-201. Jurisdiction of courts. As to misdemeanor actions, the district courts of this state shall have concurrent jurisdiction with justice of the peace courts in all prosecutions under this code.

History: **En. Sec. 48, Ch. 106, L. 1933; amd. Sec. 16, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.47, R.C.M. 1935; amd. Sec. 9, Ch. 166, L. 1951; Sec. 4-344, R.C.M. 1947; amd. and redes. 4-6-301 by Sec. 70, Ch. 387, L. 1975; R.C.M. 1947, 4-6-301.**

16-6-202. Appeal. An appeal shall lie from any conviction or order made in the prosecution of any offense against any of the provisions of this code, and the practice and procedure on any appeal from any such conviction or order and all proceedings thereon shall be governed by the law applicable to appeal in criminal cases.

History: **En. Sec. 89, Ch. 105, L. 1933; re-en. Sec. 2815.149, R.C.M. 1935; Sec. 4-224, R.C.M. 1947; amd. and redes. 4-6-302 by Sec. 38, Ch. 387, L. 1975; R.C.M. 1947, 4-6-302.**

Cross-References

Independent tax appeal procedures to be provided, Art. VIII, sec. 7, Mont. Const.

Criminal appeals and postconviction hearings, Title 46, ch. 20, 21.

16-6-203. Description of offense. In describing the offense respecting the sale or keeping for sale or other disposal of alcoholic beverages or the having, keeping, giving, purchasing, or consumption of alcoholic beverages in any information, summons, conviction, warrant, or proceeding under this code, it shall be sufficient to state simply the sale or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of alcoholic beverages, without stating:

(1) the name or kind of such alcoholic beverage or the price thereof;

(2) the name of any person to whom it was sold or disposed of or by whom it was taken or consumed or from whom it was purchased or received; or

(3) the quantity of alcoholic beverage, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity.

History: En. Sec. 80, Ch. 105, L. 1933; re-en. Sec. 2815.139, R.C.M. 1935; Sec. 4-214, R.C.M. 1947; amd. and redes. 4-6-303 by Sec. 31, Ch. 387, L. 1975; R.C.M. 1947, 4-6-303.

Cross-References

Complaints, indictments, and informations generally, Title 46, ch. 11.

16-6-204. Defense need not be negatived. The description of any offense under this code, in the words of this code or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this code, may be proved by the defendant but need not be specified or negatived in the information or complaint; but if it is so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant.

History: En. Sec. 81, Ch. 105, L. 1933; re-en. Sec. 2815.140, R.C.M. 1935; Sec. 4-215, R.C.M. 1947; amd. and redes. 4-6-304 by Sec. 32, Ch. 387, L. 1975; R.C.M. 1947, 4-6-304.

16-6-205. Sufficiency of evidence. In any prosecution under this code for the sale or keeping for sale or other disposal of alcoholic beverages or the having, keeping, giving, purchasing, or consuming of alcoholic beverages, it shall not be necessary that any witness should depose to the precise description or quantity of the alcoholic beverages sold, disposed of, kept, had, given, purchased, or consumed or the precise consideration (if any) received therefor or to the fact of the sale or other disposal having taken place with his participation or to his own personal or certain knowledge; but conviction may be based upon circumstantial evidence reasonably tending to establish the guilt of the accused beyond a reasonable doubt.

History: En. Sec. 82, Ch. 105, L. 1933; re-en. Sec. 2815.141, R.C.M. 1935; Sec. 4-216, R.C.M. 1947; amd. and redes. 4-6-305 by Sec. 33, Ch. 387, L. 1975; R.C.M. 1947, 4-6-305.

Cross-References

Montana evidence statutes and rules, Title 26, ch. 1, 2, 10.

16-6-206. Proof of violation. In proving the sale, disposal, gift, or purchase, gratuitous or otherwise, or consumption of an alcoholic beverage, it shall not be necessary in any prosecution to show that any money actually passed or any alcoholic beverage was actually consumed if the court hearing the case is satisfied that a transaction in the nature of a sale, disposal, gift, or purchase actually took place or that any consumption of an alcoholic beverage was about to take place. Proof of consumption or intended consumption of an alcoholic beverage on premises on which such consumption is prohibited by some person not authorized to consume an alcoholic beverage thereon shall be evidence that such alcoholic beverage was sold, given to, or purchased by the person consuming or being about to consume or carrying away the same, as against the occupant of the premises.

History: En. Sec. 83, Ch. 105, L. 1933; re-en. Sec. 2815.142, R.C.M. 1935; Sec. 4-217, R.C.M. 1947; amd. and redes. 4-6-306 by Sec. 34, Ch. 387, L. 1975; R.C.M. 1947, 4-6-306.

16-6-207. Analyst's report as prima facie evidence of contents. In any prosecution under this code or the rules made thereunder, production by a police officer, policeman, constable, inspector, or peace officer of a certificate or report signed or purporting to be signed by a United States or state analyst as to the analysis or ingredients of any alcoholic beverage or other fluid or any preparation, compound, or substance, such certificate or report shall be prima facie evidence of the facts stated in such certificate or report and of the authority of the person giving or making the same without any proof of appointment or signature.

History: En. Sec. 84, Ch. 105, L. 1933; re-en. Sec. 2815.143, R.C.M. 1935; Sec. 4-218, R.C.M. 1947; amd. and redes. 4-6-307 by Sec. 35, Ch. 387, L. 1975; R.C.M. 1947, 4-6-307.

16-6-208. Inference of intoxicating beverage. The court trying a case shall, in the absence of proof to the contrary, be at liberty to infer that the alcoholic beverage in question is intoxicating from the fact that a witness described it as intoxicating or by a name which is commonly applied to an intoxicating beverage.

History: En. Sec. 85, Ch. 105, L. 1933; re-en. Sec. 2815.144, R.C.M. 1935; Sec. 4-219, R.C.M. 1947; amd. and redes. 4-6-308 by Sec. 36, Ch. 387, L. 1975; R.C.M. 1947, 4-6-308.

Cross-References

Definition and requisites of inference, 26-1-501, 26-1-502.

16-6-209. Inferences of fact from evidence found. Upon the hearing of any charge of selling or purchasing an alcoholic beverage or of unlawfully having or keeping an alcoholic beverage contrary to any of the provisions of this code, the court trying the case shall have the right to draw inferences of fact from the kind and quantity of alcoholic beverage found in the possession of the person accused or in any building, premises, vehicle, motorcar, automobile, vessel, boat, canoe, conveyance, or place occupied or controlled by him and from the frequency with which the alcoholic beverage is received thereat or therein or is removed therefrom and from the circumstances under which it is kept or dealt with.

History: En. Sec. 86, Ch. 105, L. 1933; re-en. Sec. 2815.145, R.C.M. 1935; Sec. 4-220, R.C.M. 1947; amd. and redes. 4-6-309 by Sec. 37, Ch. 387, L. 1975; R.C.M. 1947, 4-6-309.

Cross-References

Definition and requisites of inference, 26-1-501, 26-1-502.

Part 3
Miscellaneous Prohibitions and Penalties

16-6-301. Transfer, sale, and possession of alcoholic beverages — when unlawful. (1) Except as provided by this code, a person or the person's agents or employees may not:

(a) expose or keep an alcoholic beverage for sale;

(b) directly or indirectly or upon any pretense or upon any device, sell or offer to sell an alcoholic beverage; or

(c) in consideration of the purchase or transfer of any property or for any other consideration or at the time of the transfer of any property, give to any other person an alcoholic beverage.

(2) A person may not have or keep any alcoholic beverage that has not been purchased within the state of Montana.

(3) This code does not prohibit:

(a) a person entering this state from another state or foreign country from having in the person's actual physical possession an amount not to exceed 3 gallons of alcoholic beverage that was purchased in another state or foreign country;

(b) possession of beer produced for personal or family use and not intended for sale that meets the exemptions of 26 U.S.C. 5053(e) and regulations implementing that section, including the brewing of beer, for personal or family use, on premises other than those of the person brewing the beer;

(c) possession of beer or wine purchased from an out-of-state brewery or winery if the person possessing the beer or wine holds a connoisseur's license as provided for in 16-4-901;

(d) possession of alcoholic beverages by brewers, distillers, and other persons duly licensed by the United States for the manufacture of those alcoholic beverages;

(e) possession of proprietary or patent medicines or of any extracts, essences, tinctures, or preparations if the possession is authorized by this code; or

(f) possession by a sheriff or bailiff of alcoholic beverages seized under execution or other judicial or extrajudicial process or sales under executions or other judicial or extrajudicial process to the department or a licensee.

(4) Except as provided in this code, a person or the person's agents or employees may not:

(a) attempt to purchase any alcoholic beverage;

(b) directly or indirectly or upon any pretense or device, purchase any alcoholic beverage; or

(c) in consideration of the sale or transfer of any property or for any other consideration or at the time of the transfer of any property, take or accept from any other person any alcoholic beverage.

History: (1) thru (3)En. Sec. 45, Ch. 105, L. 1933; amd. Sec. 1, Ch. 166, L. 1935; re-en. Sec. 2815.104, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1957; Sec. 4-150, R.C.M. 1947; amd. and redes. 4-1-201 by Sec. 16, Ch. 387, L. 1975; Sec. 4-1-201, R.C.M. 1947; (4)En. Sec. 49, Ch. 105, L. 1933; re-en. Sec. 2815.108, R.C.M. 1935;

Sec. 4-154, R.C.M. 1947; amd. and redes. 4-6-101 by Sec. 19, Ch. 387, L. 1975; Sec. 4-6-101, R.C.M. 1947; R.C.M. 1947, 4-1-201, 4-6-101; amd. Sec. 34, Ch. 68, L. 1987; amd. Sec. 3, Ch. 546, L. 1997; amd. Sec. 5, Ch. 543, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 543 in (3) substituted "code" for "section"; in (3)(a) substituted "actual physical possession" for "possession"; inserted (3)(c) concerning possession by connoisseur licensee; and made minor changes in style. Amendment effective May 1, 2001.

16-6-302. Sale of alcoholic beverage without license — sale or importation in violation of code — penalty. (1) For the purposes of this section "person" means an individual, partnership, corporation, company, firm, society, association, joint stock company, trust, or other entity capable of holding a legal or beneficial interest in property, but does not include a state or agency of a state.

(2) A person who has not been issued a license under this code who sells or keeps for sale in Montana any alcoholic beverage commits a criminal offense and upon conviction is punishable by a fine not to exceed $5,000 or by imprisonment in the state prison for not less than 1 or more than 5 years or by both the fine and imprisonment.

(3) A person in the business of selling alcoholic beverages in another state or country who imports or distributes alcoholic beverages in violation of this code commits a civil offense.

(4) A person convicted under subsection (3):

(a) for a first offense, must be mailed a certified letter by the department ordering that person to cease and desist any shipments of alcoholic beverages to any person in Montana;

(b) for a second offense, shall be fined a civil penalty not to exceed $5,000;

(c) for a third offense, shall be fined a civil penalty not to exceed $10,000; and

(d) for a fourth or subsequent offense, shall be fined a civil penalty not to exceed $50,000.

History: En. Sec. 18, Ch. 84, L. 1937; Sec. 4-420, R.C.M. 1947; amd. and redes. 4-4-407 by Sec. 97, Ch. 387, L. 1975; R.C.M. 1947, 4-4-407; amd. Sec. 4, Ch. 5, L. 1979; amd. Sec. 6, Ch. 543, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 543 inserted (1) defining person; in (2) near beginning after "sale" inserted "in Montana", after "beverage" substituted "commits a criminal offense" for "is guilty of a felony", and after "fine" substituted "not to exceed $5,000" for "of not less than $1,000 or more than $5,000"; inserted (3) concerning civil offense for importing or distributing alcoholic beverages; inserted (4) concerning civil penalties for progressive number of offenses; and made minor changes in style. Amendment effective May 1, 2001.

16-6-303. Sale of liquor not purchased from agency liquor store forbidden — penalty. It is unlawful for any licensee to sell or keep for sale or have on the licensee's premises for any purpose whatever any liquor except that purchased from an agency liquor store, and any licensee found in possession of or selling and keeping for sale any liquor that was not purchased from an agency liquor store shall, upon conviction, be punished by a fine of not less than $500 or more than $1,500, by imprisonment for not less than 3 months or more than 1 year, or by both fine and imprisonment. If the department is satisfied that the liquor was knowingly sold or kept for sale within the licensed premises by the licensee or by the licensee's agents, servants, or employees, the department shall immediately revoke the license.

History: En. Sec. 17, Ch. 84, L. 1937; Sec. 4-419, R.C.M. 1947; amd. and redes. 4-6-102 by Sec. 96, Ch. 387, L. 1975; amd. Sec. 14, Ch. 496, L. 1977; R.C.M. 1947, 4-6-102; amd. Sec. 38, Ch. 530, L. 1995.

Cross-References

Place of imprisonment when none specified — sentence for 1 year or less, 46-18-211.

16-6-304. Providing alcoholic beverage to intoxicated person prohibited. (1) No store manager, retail licensee, or any employee of a store manager or retail licensee may sell any alcoholic beverage or permit any alcoholic beverage to be sold to any person apparently under the influence of an alcoholic beverage.

(2) No person may give an alcoholic beverage to a person apparently under the influence of alcohol.

History: En. Sec. 55, Ch. 105, L. 1933; re-en. Sec. 2815.114, R.C.M. 1935; Sec. 4-160, R.C.M. 1947; amd. and redes. 4-6-103 by Sec. 23, Ch. 387, L. 1975; R.C.M. 1947, 4-6-103.

Cross-References

Age restriction, Art. II, sec. 14, Mont. Const.

Unlawful to sell or give alcoholic beverages — persons actually or apparently intoxicated, 16-3-301.

16-6-305. Age limit for sale or provision of alcoholic beverages — liability of provider. (1) (a) Except in the case of an alcoholic beverage provided in a nonintoxicating quantity to a person under 21 years of age by his parent or guardian, physician or dentist for medicinal purposes, a licensed pharmacist upon the prescription of a physician, or an ordained minister or priest in connection with a religious observance, a person may not sell or otherwise provide an alcoholic beverage to a person under 21 years of age.

(b) A parent, guardian, or other person may not knowingly sell or otherwise provide an alcoholic beverage in an intoxicating quantity to a person under 21 years of age.

(c) For the purposes of this section, "intoxicating quantity" means a quantity of an alcoholic beverage that is sufficient to produce:

(i) a blood, breath, or urine alcohol concentration in excess of 0.05; or

(ii) substantial or visible mental or physical impairment.

(2) Any person is guilty of a misdemeanor who:

(a) invites a person under the age of 21 years into a public place where an alcoholic beverage is sold and treats, gives, or purchases an alcoholic beverage for the person;

(b) permits the person in a public place where an alcoholic beverage is sold to treat, give, or purchase alcoholic beverages for him; or

(c) holds out the person to be 21 years of age or older to the owner of the establishment or his or her employee or employees.

(3) It is unlawful for any person to fraudulently misrepresent his or her age to any dispenser of alcoholic beverages or to falsely procure any identification card or to alter any of the statements contained in any identification card.

(4) A person 21 years of age or older who violates the provisions of subsection (1)(b) is, in addition to applicable criminal penalties, subject to civil liability for damages resulting from a tortious act committed by the person to whom the intoxicating substance was sold or provided if the act is judicially determined to be the result of the intoxicated condition created by the violation. *(See compiler's comments for contingent termination of certain text.)*

History: (1)En. Sec. 56, Ch. 105, L. 1933; re-en. Sec. 2815.115, R.C.M. 1935; amd. Sec. 1, Ch. 240, L. 1971; amd. Sec. 2, Ch. 94, L. 1973; Sec. 4-161, R.C.M. 1947; amd. and redes. 4-6-104 by Sec. 24, Ch. 387, L. 1975; Sec. 4-6-104, R.C.M. 1947; (2)En. Sec. 38, Ch. 84, L. 1937; amd. Sec. 2, Ch. 226, L. 1947; amd. Sec. 1, Ch. 161, L. 1951; amd. Sec. 5, Ch. 240, L. 1971; amd. Sec. 6, Ch. 94, L. 1973; Sec. 4-439, R.C.M. 1947; amd. and redes. 4-6-404 by Sec. 104, Ch. 387, L. 1975; Sec. 4-6-404, R.C.M. 1947; R.C.M. 1947, 4-6-104, 4-6-404(part); amd. Sec. 1, Ref. 74, app. Nov. 7, 1978; (3)En. Sec. 1, Ch. 26, L. 1979; amd. Sec. 4, Ch. 186, L. 1979; amd. Sec. 35, Ch. 68, L. 1987; amd. Sec. 2, Ch. 217, L. 1987; amd. Sec. 1, Ch. 448, L. 1989.

Compiler's Comments

Contingent Termination Date: Section 9(2), Ch. 217, L. 1987, read: "If the United States congress repeals or removes or a final judgment invalidates the provisions of federal law that require states to raise the legal age for purchasing and possessing alcoholic beverages to 21 as a condition of full receipt of federal highway funds, the governor of Montana shall immediately certify the fact of the repeal, removal, or invalidation to the secretary of state of Montana. This act terminates on the date of such certification."

Cross-References

Age restrictions, Art. II, sec. 14, Mont. Const.

Unlawful to sell or give alcoholic beverages — persons under 21 years old, 16-3-301.

Penalty, 16-6-314.

Adults giving or selling alcoholic beverage to children or encouraging its use, 45-5-622, 45-5-623.

Possession of alcoholic beverages by children, 45-5-624.

16-6-306. Bottle clubs prohibited. The operation of alcoholic beverage bottle clubs is hereby prohibited by any person, persons, partnership, firm, corporation, or association. A bottle club is defined as any person, persons, partnership, firm, corporation, or association maintaining premises not licensed for the sale of alcoholic beverages, for a fee or other consideration, including the sale of food, mixes, ice, or any other fluids for alcoholic beverages, or otherwise furnishing premises for such purposes and from which they would derive revenue.

History: En. Sec. 1, Ch. 200, L. 1959; amd. Sec. 1, Ch. 109, L. 1963; Sec. 4-172, R.C.M. 1947; redes. 4-6-105 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-6-105; amd. Sec. 36, Ch. 68, L. 1987.

16-6-307. Consumption of alcoholic beverage on druggists' premises prohibited. No person within the state of Montana shall consume any alcoholic beverage on any premises where an alcoholic beverage is kept for sale by a druggist, nor shall any druggist permit any alcoholic beverage to be consumed on such premises.

History: En. Sec. 51, Ch. 105, L. 1933; re-en. Sec. 2815.110, R.C.M. 1935; Sec. 4-156, R.C.M. 1947; amd. and redes. 4-6-106 by Sec. 20, Ch. 387, L. 1975; R.C.M. 1947, 4-6-106.

Cross-References

Regulation of pharmacists, Title 37, ch. 7.

16-6-308. Patent medicine prohibition. From and after the date of notification under 16-1-202(3), any person within the state selling or keeping for sale any such proprietary or patent medicine, extract, essence, tincture, or preparation so prohibited shall be guilty of an offense under this code.

History: En. Sec. 36, Ch. 105, L. 1933; re-en. Sec. 2815.95, R.C.M. 1935; Sec. 4-141, R.C.M. 1947; amd. and redes. 4-1-203 by Sec. 15, Ch. 387, L. 1975; R.C.M. 1947, 4-1-203(part).

Cross-References

Penalty, 16-6-314.

16-6-309. Alcoholic beverages administered to institution inmates. No alcoholic beverage shall be administered by any person under 16-1-204 except to bona fide patients or inmates of the institution of which he is in charge, and every person in charge of an institution who administers alcoholic beverages in evasion or violation of this code shall be guilty of an offense against this code.

History: En. Sec. 34, Ch. 105, L. 1933; re-en. Sec. 2815.93, R.C.M. 1935; amd. Sec. 9, Ch. 154, L. 1965; Sec. 4-139, R.C.M. 1947; amd. and redes. 4-1-205 by Sec. 13, Ch. 387, L. 1975; R.C.M. 1947, 4-1-205(part); amd. Sec. 37, Ch. 68, L. 1987.

Cross-References

Penalty, 16-6-314.

Distribution to patients or inmates at state custodial institutions — misdemeanor, 53-1-103.

16-6-310. Officer or agent of corporation deemed party to offense. Where an offense against this code is committed by a corporation, the officer or agent of the corporation in charge of the premises in which the offense is committed shall prima facie be deemed to be a party to the offense so committed and shall be personally liable to the penalties prescribed for the offense as a principal offender. Nothing in this section shall relieve the corporation or the person who actually committed the offense from liability therefor.

History: En. Sec. 72, Ch. 105, L. 1933; re-en. Sec. 2815.131, R.C.M. 1935; Sec. 4-206, R.C.M. 1947; redes. 4-6-107 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-6-107.

Cross-References

Criminal liability for acts committed by or for another, Title 45, ch. 2, part 3.

16-6-311. Occupant of premises deemed party to offense. Upon proof of the fact that an offense against this code has been committed by any person in the employ of the occupant of any house, shop, room, or other premises in which the offense is committed or by any person who is suffered by the occupant to be or remain in or upon such house, shop, room, or premises or to act in any way for the occupant, the occupant shall prima facie be deemed to be a party to the offense so committed and shall be liable to the penalties prescribed for the offense as a principal offender, notwithstanding the fact that the offense was committed by a person who is not proved to have committed it under or by the direction of the occupant. Nothing in this section shall relieve the person actually committing the offense from liability therefor.

History: En. Sec. 73, Ch. 105, L. 1933; re-en. Sec. 2815.132, R.C.M. 1935; Sec. 4-207, R.C.M. 1947; redes. 4-6-108 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-6-108.

Cross-References

Criminal liability for acts committed by or for another, Title 45, ch. 2, part 3.

16-6-312. Premises where alcoholic beverages illegally sold public nuisance. Any room, house, building, boat, vehicle, structure, or place where alcoholic beverages are knowingly manufactured, sold, or bartered in violation of this code or 45-8-111 and all property knowingly kept and used in maintaining the same is hereby declared to be a public nuisance, and any person who maintains such a nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than $100 or more than $500 and be imprisoned not less than 30 days or more than 6 months.

History: En. Sec. 8, Ch. 30, L. 1937; Sec. 4-238, R.C.M. 1947; amd. and redes. 4-6-401 by Sec. 43, Ch. 387, L. 1975; amd. Sec. 16, Ch. 496, L. 1977; R.C.M. 1947, 4-6-401.

Cross-References

Public nuisances, Title 27, ch. 30, part 2.

Place of imprisonment when none specified — sentence for 1 year or less, 46-18-211.

16-6-313. Injunction actions. An action to enjoin any nuisance defined in this code may be brought in the name of the state of Montana by the attorney general of the state or by any county attorney. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear, by affidavits or otherwise, to the satisfaction of the court or judge in vacation that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the fixtures or other things used in connection with the violation of this code constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no alcoholic beverages shall be manufactured, sold, or bartered in such room, house, building, boat, vehicle, structure, or place or any part thereof. Upon judgment of the court ordering such nuisance to be abated, the court may order that the room, house, building, structure, boat, vehicle, or place shall not be occupied or used for 1 year thereafter. The court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal and liquidated sum of not less than $500 or more than $1,000, payable to the state of Montana and conditioned that alcoholic beverages will not thereafter be manufactured, sold, or bartered therein or thereon and that he will pay all fines, costs, and damages that may be assessed for any violations of this code upon said property.

History: En. Sec. 48, Ch. 106, L. 1933; amd. Sec. 16, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.49, R.C.M. 1935; Sec. 4-346, R.C.M. 1947; amd. and redes. 4-6-402 by Sec. 71, Ch. 387, L. 1975; R.C.M. 1947, 4-6-402; amd. Sec. 39, Ch. 68, L. 1987.

Cross-References

Injunctions generally, Title 27, ch. 19.
Injunction against nuisance, 27-30-103.
Action to abate public nuisance, 45-8-112.

16-6-314. Penalty for violating code — revocation of license — penalty for violation by underage person. (1) A person who violates a provision of this code is guilty of a misdemeanor punishable as provided in 46-18-212, except as otherwise provided in this section.

(2) If a retail licensee is convicted of an offense under this code, the licensee's license must be immediately revoked or, in the discretion of the department, such other sanction imposed as may be authorized under 16-4-406.

(3) A person under 21 years of age who violates 16-3-301(4) or 16-6-305(3) is subject to the penalty provided in 45-5-624(2) or (3). *(See compiler's comments for contingent termination of certain text.)*

History: En. Sec. 38, Ch. 84, L. 1937; amd. Sec. 2, Ch. 226, L. 1947; amd. Sec. 1, Ch. 161, L. 1951; amd. Sec. 5, Ch. 240, L. 1971; amd. Sec. 6, Ch. 94, L. 1973; Sec. 4-439, R.C.M. 1947; amd. and redes. 4-6-404 by Sec. 104, Ch. 387, L. 1975; R.C.M. 1947, 4-6-404(part); amd. Sec. 5, Ch. 186, L. 1979; amd. Sec. 2, Ch. 105, L. 1985; amd. Sec. 3, Ch. 217, L. 1987; amd. Sec. 22, Ch. 83, L. 1989; amd. Sec. 1, Ch. 481, L. 1995.

Compiler's Comments

Contingent Termination Date: Section 9(2), Ch. 217, L. 1987, read: "If the United States congress repeals or removes or a final judgment invalidates the provisions of federal law that require states to raise the legal age for purchasing and possessing alcoholic beverages to 21 as a condition of full receipt of federal highway funds, the governor of Montana shall immediately certify the fact of the repeal, removal, or invalidation to the secretary of state of Montana. This act terminates on the date of such certification."

Cross-References

Unlawful possession of intoxicating substance — interference with sentence or court order, 45-5-624.
Place of imprisonment when none specified — sentence for 1 year or less, 46-18-211.
Commutation of juvenile's sentence — transfer to juvenile correctional facility, 52-5-111.

CHAPTERS 7 THROUGH 9

RESERVED

CHAPTER 10

REGULATION OF CIGARETTE MARKETING

Part 1 — Policy and Definitions

16-10-101. Short title.
16-10-102. Declaration of policy.
16-10-103. Definitions.
16-10-104. Powers of department.
16-10-105 through 16-10-109 reserved.
16-10-110. Licensure as both wholesaler and retailer allowed.

Part 2 — Sales Price of Cigarettes

16-10-201. Wholesaler-to-wholesaler sales.
16-10-202. Repealed.
16-10-203. Sales to meet competition permitted.
16-10-204. Determining cost — prices below cost — free merchandise.
16-10-205. Purchases outside ordinary trade channels.

Part 3 — Unlawful Practices—Exceptions

16-10-301. Sales below cost.
16-10-302. Illegal contracts.
16-10-303. Cost survey as evidence.
16-10-304. Exceptions.
16-10-305. Repealed.
16-10-306. Cigarette and tobacco product labels — federal requirements — penalty.

Part 4 — Enforcement

16-10-401. Repealed.
16-10-402. Injunctive and other civil relief.
16-10-403. Revocation or suspension of license — civil penalty.

Part 1
Policy and Definitions

16-10-101. Short title. This chapter shall be known, designated, and cited as "The Montana Cigarette Sales Act".

History: En. Sec. 1, Ch. 258, L. 1965; R.C.M. 1947, 51-302.

16-10-102. Declaration of policy. The advertising, offering for sale, or sale of cigarettes below cost in the retail and wholesale trades is an unfair and deceptive business practice. It is the policy of the state to promote the public welfare, and it is the purpose of this chapter to carry out that policy in the public interest, stabilize the sale of cigarettes, and maximize and protect the state revenues from this source.

History: En. Preamble, Ch. 258, L. 1965; R.C.M. 1947, 51-301; amd. Sec. 5, Ch. 5, L. 1979; amd. Sec. 3, Ch. 578, L. 1995.

Cross-References

Consumer protection and unfair trade practices, Title 30, ch. 14, parts 1 and 2.

16-10-103. Definitions. When used in this chapter, except when the context clearly indicates a different meaning, the following definitions apply:

(1) "Basic cost of cigarettes" means the list cost of cigarettes as reported to the department by the manufacturer without any deductions for discounts or taxes of any kind.

(2) "Business day" means any day other than a Sunday or a legal holiday.

(3) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco.

(4) (a) The term "cost to the retailer" means the cost to the wholesaler from whom the cigarettes were purchased by the retailer plus the cost of doing business by the retailer as

evidenced by the standards and methods of accounting regularly employed by the retailer in the retailer's determination of costs for income tax reporting purposes for the total operation of the retailer's establishment. Cost of doing business by the retailer includes, without limitation:

(i) labor costs (including salaries of executives and officers);
(ii) rent;
(iii) depreciation;
(iv) selling costs;
(v) maintenance of equipment;
(vi) delivery costs;
(vii) all types of licenses;
(viii) all types of business taxes;
(ix) all types of insurance;
(x) all types of advertising;
(xi) any rebates, patronage dividends, or concessions, no matter how defined;
(xii) expenses prior to opening for business, including all startup costs, land acquisition costs, construction costs, costs for marketing studies, and similar expenses;
(xiii) any district, central, regional, and national administrative and operation costs and expenses; and
(xiv) all other indirect or overhead costs with respect to the operation of the business of the retailer.

(b) The cost of doing business by the retailer must be expressed as a percentage and applied to the cost to the wholesaler from whom the cigarettes were purchased.

(c) A retailer who purchases directly from a manufacturer or from any other person at or at less than or about the price normally and usually charged for purchases in wholesale quantities shall, in determining the cost to the retailer, add the cost of doing business by the wholesaler, as determined in subsection (5)(b), to the basic cost of cigarettes to the retailer, as well as the cost of doing business by the retailer.

(d) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost of doing business by the retailer making the sale, the cost of doing business by the retailer is presumed to be 10% of the cost to the wholesaler.

(5) (a) The term "cost to the wholesaler" means the basic cost of cigarettes purchased by the wholesaler from a manufacturer plus the cost of doing business by the wholesaler as evidenced by the standards and methods of accounting regularly employed by the wholesaler in the wholesaler's determination of costs for income tax reporting purposes for the total operation of the wholesaler's business. The cost of doing business by the wholesaler includes, without limitation:

(i) labor costs (including salaries of executives and officers);
(ii) rent;
(iii) depreciation;
(iv) selling costs;
(v) maintenance of equipment;
(vi) delivery costs;
(vii) all types of licenses;
(viii) all types of business taxes;
(ix) all types of insurance;
(x) all types of advertising;
(xi) any rebates, patronage dividends, or concessions, no matter how defined;
(xii) expenses prior to opening for business, including all startup costs, land acquisition costs, construction costs, costs for marketing studies, and similar expenses;
(xiii) any district, central, regional, and national administrative and operation costs and expenses; and
(xiv) all other indirect or overhead costs with respect to the operation of the wholesaler.

(b) The cost of doing business by a wholesaler must be expressed as a percentage and applied to the basic cost of cigarettes.

(c) In the absence of the filing with the department of proof that the department declares to be satisfactory of a lesser or higher cost of doing business by the wholesaler making the sale, the cost of doing business by the wholesaler is presumed to be 5% of the basic cost of cigarettes to the wholesaler plus cartage to the retail outlet if performed or paid for by the wholesaler. The cartage cost, in the absence of the filing with the department of satisfactory proof of a lesser or higher cost, is considered to be 3/4 of 1% of the basic cost of cigarettes to the wholesaler.

(6) "Department" means the department of revenue provided for in 2-15-1301 and, when the meaning of the context requires, includes its employees.

(7) "Manufacturer" means any person who fabricates cigarettes from raw materials for the purpose of resale.

(8) "Person" means an individual, firm, association, company, partnership, corporation, or other business entity, however formed.

(9) "Retailer" means a person who operates a store, stand, booth, concession, or other outlet for the purpose of selling cigarettes at retail.

(10) "Sale" or "sell" means any transfer of cigarettes for consideration, exchange, barter, gift, offer for sale, or distribution, in any manner or by any means.

(11) "Sell at retail", "sale at retail", or "retail sales" means any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the retailer's business, to the purchaser for consumption or use.

(12) "Sell at wholesale", "sale at wholesale", or "wholesale sales" means and includes any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

(13) "Sole distributor" means a person who either causes a unique brand of cigarettes to be manufactured according to distinctive specifications and acts as the exclusive distributor of the cigarettes or is the exclusive distributor of a brand of cigarettes within the continental United States.

(14) "Wholesaler" means a person who services retail outlets by maintaining an established place of business for the purchase of cigarettes and who:

(a) purchases cigarettes from a manufacturer for the purpose of selling cigarettes to retailers; or

(b) purchases cigarettes from a sole distributor, another wholesaler, or any other person for the purpose of selling cigarettes to retailers.

History: En. Sec. 2, Ch. 258, L. 1965; amd. Sec. 1, Ch. 130, L. 1967; amd. Sec. 16, Ch. 391, L. 1973; R.C.M. 1947, 51-303; amd. Sec. 4, Ch. 578, L. 1995.

16-10-104. Powers of department. (1) In addition to the penalties and rights imposed and set forth in 16-10-402, the department shall enforce the provisions of this chapter.

(2) The department has the power to adopt, amend, and repeal rules necessary to enforce and administer the provisions of this chapter.

History: En. Sec. 13, Ch. 258, L. 1965; R.C.M. 1947, 51-314(part); amd. Sec. 5, Ch. 578, L. 1995.

Cross-References

Rulemaking under Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

16-10-105 through 16-10-109 reserved.

16-10-110. Licensure as both wholesaler and retailer allowed. This chapter does not prevent a person from being licensed as both a wholesaler and a retailer.

History: En. Sec. 1, Ch. 578, L. 1995.

Part 2
Sales Price of Cigarettes

16-10-201. Wholesaler-to-wholesaler sales. When one wholesaler sells cigarettes to any other wholesaler, the former may not be required to include in the selling price to the latter the cost to the wholesaler, as provided by 16-10-103, except that no such sale may be made at a price less than the basic cost of cigarettes, as defined in 16-10-103, but the latter wholesaler, upon resale to a retailer, is considered to be the wholesaler governed by the provisions of 16-10-103(5).

History: **En. Sec. 4, Ch. 258, L. 1965; R.C.M. 1947, 51-305; amd. Sec. 6, Ch. 578, L. 1995.**

16-10-202. Repealed. Sec. 7, Ch. 130, L. 1991.

History: **En. Sec. 5, Ch. 258, L. 1965; R.C.M. 1947, 51-306.**

16-10-203. Sales to meet competition permitted. (1) (a) Any retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to him as a retailer as prescribed in this chapter.

(b) Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to him as a wholesaler as prescribed in this chapter.

(c) The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in 16-10-304 shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of this section.

(2) In the absence of proof of the "price of a competitor" under this section, the "lowest cost to the retailer" or the "lowest cost to the wholesaler", as the case may be, determined by any "cost survey" made pursuant to 16-10-303, may be considered to be the "price of a competitor" within the meaning of this section.

History: **En. Sec. 7, Ch. 258, L. 1965; R.C.M. 1947, 51-308.**

16-10-204. Determining cost — prices below cost — free merchandise. (1) In determining the cost to the retailer and the cost to the wholesaler, the department or a court shall receive and consider evidence tending to show that any person accused of violating the provisions of this chapter purchased cigarettes, with respect to the sale of which complaint is made, below either the cost to the retailer or the cost to the wholesaler, depending upon the status of the person accused, or upon terms or in a manner or under invoices that conceal the true cost, discounts, or terms of purchase. Further, the department or a court shall receive and consider evidence of the normal, customary, and prevailing terms and discounts in connection with other sales of a similar nature in this state.

(2) Merchandise given gratis or payment made to a retailer or wholesaler by the manufacturer of the merchandise for display, advertising, promotion purposes, any type of discount, or otherwise may not be considered in determining the cost of cigarettes to the retailer or wholesaler.

History: **En. Sec. 9, Ch. 258, L. 1965; R.C.M. 1947, 51-310; amd. Sec. 7, Ch. 578, L. 1995.**

16-10-205. Purchases outside ordinary trade channels. In establishing the cost of cigarettes to the retailer or wholesaler, the invoice cost of said cigarettes purchased at a forced, bankrupt, or closeout sale or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the retailer or wholesaler in the quantity last purchased through the ordinary channels of trade.

History: **En. Sec. 10, Ch. 258, L. 1965; R.C.M. 1947, 51-311.**

Part 3
Unlawful Practices — Exceptions

16-10-301. Sales below cost. It is unlawful and a violation of this chapter:

(1) for any retailer or wholesaler to:

(a) advertise, offer to sell, or sell, at retail or wholesale, cigarettes at less than cost to a retailer or wholesaler;

(b) offer a rebate in price, give a rebate in price, offer a concession of any kind, or give a concession of any kind in connection with the sale of cigarettes that are sold by the wholesaler or retailer in the ordinary course of trade or business if the rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise to which the rebate or concession may lawfully be given;

(2) for any retailer to:

(a) induce or attempt to induce or procure or attempt to procure the purchase of cigarettes at a price less than the cost to the wholesaler, as defined in this chapter;

(b) induce or attempt to induce or procure or attempt to procure any rebate or concession of any kind or nature whatever in connection with the purchase of cigarettes.

History: **En. Sec. 3, Ch. 258, L. 1965; R.C.M. 1947, 51-304(1), (2), (4); amd. Sec. 8, Ch. 578, L. 1995.**

Cross-References

Sales to meet competition permitted, 16-10-203.

16-10-302. Illegal contracts. Any contract, expressed or implied, made by any person in violation of any of the provisions of this chapter is declared to be an illegal and void contract, and no recovery thereon shall be had.

History: **En. Sec. 8, Ch. 258, L. 1965; R.C.M. 1947, 51-309.**

Cross-References

Illegality in contracts, 28-2-701 through 28-2-722, 28-2-803.

16-10-303. Cost survey as evidence. When a cost survey pursuant to cost accounting practices used for income tax reporting purposes has been made by the department, a trade association, an industry group, a wholesaler, or a retailer to establish either the lowest cost to the retailer or the lowest cost to the wholesaler, or both, for the state, the cost survey is competent evidence for use in proving the cost to the person complained against within the provisions of this chapter.

History: **En. Sec. 11, Ch. 258, L. 1965; R.C.M. 1947, 51-312; amd. Sec. 9, Ch. 578, L. 1995.**

16-10-304. Exceptions. The provisions of this chapter shall not apply to sales at retail or sales at wholesale made:

(1) as an isolated transaction and not in the usual course of business;

(2) where cigarettes are advertised, offered for sale, or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and said advertising, offer to sell, or sale shall state the reason thereof and the quantity of such cigarettes advertised, offered for sale, or sold as imperfect or damaged and said advertising, offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold;

(3) where cigarettes are sold upon the final liquidation of a business; or

(4) where cigarettes are advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court.

History: **En. Sec. 6, Ch. 258, L. 1965; R.C.M. 1947, 51-307.**

16-10-305. Repealed. Sec. 7, Ch. 130, L. 1991.

History: **En. Sec. 1, Ch. 139, L. 1985.**

16-10-306. Cigarette and tobacco product labels — federal requirements — penalty. (1) A person may not knowingly import into this state for sale or other distribution any package of cigarettes or tobacco product that violates any federal:

(a) tax, trademark, or copyright law; or

(b) requirement for the placement of labels, warnings, or other information, including health hazards, that must be on the container or individual package.

(2) A person may not sell or offer to sell a package of cigarettes or tobacco product or affix the tax insignia on a package of cigarettes, as provided in 16-11-113, knowing that:

(a) the package is marked as manufactured for use outside of the United States;

(b) any label or language has been altered from the manufacturer's original packaging and labeling to conceal the fact that the package was manufactured for use outside of the United States; or

(c) a stamp, label, or decal was affixed to conceal the fact that the package was manufactured for use outside of the United States.

(3) A package of cigarettes or tobacco product found in this state that is marked for use outside of the United States is contraband and may be seized without a warrant by the

department, any agent of the department, or any peace officer. Any cigarettes or tobacco products seized as contraband must be destroyed by the department.

(4) (a) The department may proceed against a person who violates this section through a civil action under the civil enforcement provisions of Title 16, chapter 10, part 4.

(b) A violation of this section is criminally punishable by a fine in an amount not to exceed $10,000.

(5) For the purposes of this section, the term "cigarette" has the meaning defined in 16-11-102 and "tobacco product" has the meaning defined in 16-11-201.

History: En. Sec. 1, Ch. 465, L. 1999.

Part 4
Enforcement

16-10-401. Repealed. Sec. 35, Ch. 578, L. 1995.

History: En. Sec. 3, Ch. 258, L. 1965; R.C.M. 1947, 51-304(3).

16-10-402. Injunctive and other civil relief. (1) In addition to the penalty provided by 16-10-403, any person injured or any trade association that represents a person injured by any violation of this chapter may maintain an action in any court of equitable jurisdiction to prevent, restrain, or enjoin the violation. If in the action a violation of this chapter is established, the court shall enjoin and restrain or otherwise prohibit the violation and, in addition, shall assess in favor of the plaintiff and against the defendant the costs of the suit and reasonable attorney fees. In the action, it is not necessary that actual damages to the plaintiff be alleged or proved, but when alleged and proved, the plaintiff in the action, in addition to injunctive relief and fees and costs of suit, is entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

(2) If injunctive relief is not sought or required, any person injured by a violation of this chapter may maintain an action for damages alone in any court of competent jurisdiction. The measure of damages in the action is the same as prescribed in subsection (1).

History: En. Sec. 12, Ch. 258, L. 1965; R.C.M. 1947, 51-313; amd. Sec. 10, Ch. 578, L. 1995.

Cross-References

Costs and attorney fees generally, Title 25, ch. 10.

Injunctions generally, Title 27, ch. 19.

16-10-403. Revocation or suspension of license — civil penalty. (1) The department may revoke or suspend the license of, impose a civil penalty not to exceed $500 on, or order any combination of revocation, suspension, and penalty to be imposed on any licensed wholesaler or retailer upon sufficient cause appearing of the violation of this chapter or upon the failure of the licensee to comply with any of the provisions of this chapter.

(2) A license may not be suspended or revoked except upon notice to the licensee and after a hearing prescribed by the department at its principal office. The department, upon a finding by it that the licensee has failed to comply with any provisions of this chapter or any rule promulgated under this chapter, shall, in the case of a first offender, suspend the license of the licensee for a period of not less than 5 or more than 20 consecutive business days, impose a civil penalty in an amount not to exceed $500, or order both the suspension and the penalty. In the case of a second or plural offender, the department shall suspend the license for a period of not less than 20 consecutive business days or more than 12 months, impose a civil penalty in an amount not to exceed $500, or order both the suspension and the penalty. In the event the department finds the offender has been guilty of willful and persistent violations, it may revoke the licensee's license and, in its discretion, may impose a civil penalty in an amount not to exceed $500.

(3) Any person whose license has been revoked may apply to the department at the expiration of 1 year for a reinstatement of the license. The license may be reinstated by the department if it appears to the satisfaction of the department that the licensee will comply with the provisions of this chapter and the rules promulgated under this chapter.

(4) A person whose license has been suspended or revoked may not sell cigarettes or permit cigarettes to be sold during the period of the suspension or revocation on the premises occupied

by the person or upon other premises controlled by the person or others or in any other manner or form whatever. A disciplinary proceeding or action is not barred or abated by the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under the provisions of the cigarette tax law.

(5) Any determination by the department and any order of suspension or revocation of a license or refusal to reinstate a license after revocation is reviewable by the court in a proper case and in proceedings as provided by the procedural law of this jurisdiction.

History: En. Sec. 13, Ch. 258, L. 1965; R.C.M. 1947, 51-314(part); amd. Sec. 11, Ch. 578, L. 1995; amd. Sec. 42, Ch. 51, L. 1999.

Cross-References

Tax appeals, Art. VIII, sec. 7, Mont. Const.

Contested cases — notice and hearing under Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

Montana Rules of Civil Procedure, Title 25, ch. 20.

CHAPTER 11

TAXATION OF TOBACCO PRODUCTS

Part 1 — Tax on Cigarettes

16-11-101. Legislative intent.
16-11-102. Definitions.
16-11-103. Powers of department.
16-11-104. Carriers to report cigarette shipments.
16-11-105. Rulemaking authority of department of justice.
16-11-106 through 16-11-109 reserved.
16-11-110. Signature alternatives for electronically filed returns.
16-11-111. Cigarette sales tax — exemption for sale to tribal member.
16-11-112. Tax on ultimate consumer.
16-11-113. Tax insignia.
16-11-114. Insignia discount.
16-11-115. Tax meter machine — tax stamp-applying machine — purchase of stamps.
16-11-116. Resale of insignia prohibited — rebate.
16-11-117. When payment for insignia due.
16-11-118. Records of wholesalers.
16-11-119. Disposition of taxes.
16-11-120. Cigarette licenses.
16-11-121. Vending machines not places of business.
16-11-122. License fees — renewal.
16-11-123. Display of license.
16-11-124. Disposition of license fees.
16-11-125. Licensure as both wholesaler and retailer allowed.
16-11-126 through 16-11-130 reserved.
16-11-131. Transporting cigarettes without insignia a misdemeanor — invoices and delivery tickets required — stop and inspection authorized.
16-11-132. Unlawful to sell cigarettes without valid license — exceptions.
16-11-133. Sale and use of cigarettes without insignia unlawful.
16-11-134. Forged license stamp or insignia.
16-11-135 through 16-11-140 reserved.
16-11-141. Powers of arrest — search and seizure.
16-11-142. Duties of county attorneys and peace officers.
16-11-143. Penalty and interest for unpaid cigarette tax.
16-11-144. Revocation or suspension of license.
16-11-145. Place where violations committed a public nuisance.
16-11-146. Penalty for forged license stamp or insignia.
16-11-147. Seizure and forfeiture of unlawful cigarettes.
16-11-148. Violation a misdemeanor unless otherwise provided — penalties.
16-11-149. Hearings before state tax appeal board.
16-11-150. Appeal to district court.
16-11-151 through 16-11-154 reserved.
16-11-155. Definitions.
16-11-156. Stamps affixed on cigarettes — exception.
16-11-157. Possession or unauthorized transportation of unstamped cigarettes — civil penalty.
16-11-158. Sale or retention of forfeited property — use of sale proceeds.

Part 2 — Tax on Tobacco Products Other Than Cigarettes

16-11-201. Definitions.
16-11-202. Tax on sale of tobacco other than cigarettes — imposed on retail consumer — rate of tax.
16-11-203. Wholesaler to precollect tax — penalty and interest.
16-11-204. Wholesaler's sale without tax prepayment a misdemeanor — penalty.
16-11-205. Unlawful sales — penalty.
16-11-206. Wholesaler's discount — disposition of taxes.

Part 3 — Youth Access to Tobacco Products Control Act

16-11-301. Short title.
16-11-302. Definitions.
16-11-303. License for retail sale of tobacco products.
16-11-304. Signs.
16-11-305. Sale or distribution of tobacco products to persons under 18 years of age prohibited.
16-11-306. Sales of tobacco through vending machines restricted.
16-11-307. Distribution of tobacco products in other than sealed packages prohibited — minimum package size.
16-11-308. Civil penalties — license suspension — tobacco education fee.
16-11-309. Inspection and notification of violation required.
16-11-310. Minors not liable for possession or attempt to purchase.
16-11-311. Local regulations.
16-11-312. Rulemaking authority.

Part 4 — Tobacco Products Reserve Fund

16-11-401. Findings and purpose.
16-11-402. Definitions.
16-11-403. Requirements.

Chapter Cross-References

Multistate Tax Compact, Title 15, ch. 1, part 6.

Part 1
Tax on Cigarettes

16-11-101. Legislative intent. The legislature hereby declares that its intent in enacting 16-11-111 is to enable those who are subject to the taxes imposed by the federal tax laws to avail themselves of the deductions respecting state and local taxes specified in section 164 of the federal Internal Revenue Code of 1954 in computing their taxable income.

History: En. Sec. 2, Ch. 97, L. 1963; R.C.M. 1947, 84-5606.1.

16-11-102. Definitions. (1) As used in this chapter, the following definitions apply, unless the context requires otherwise:

(a) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco.

(b) "Department" means the department of revenue provided for in 2-15-1301.

(c) "Person" means an individual, firm, partnership, corporation, association, company, or other business entity, however formed.

(2) As used in this part, the following definitions apply, unless the context requires otherwise:

(a) "Cigarette vendor" means a person doing business in the state who purchases cigarettes through a wholesaler, subjobber, or retailer for 10 or more cigarette vending machines that the person operates for a profit in premises or locations other than the person's own. That person must be treated as a wholesaler. A person who operates fewer than 10 cigarette vending machines must be treated as a retailer.

(b) "Full face value of insignia" means the total amount of the tax levied under this part.

(c) "Insignia" or "indicia" means the impression, mark, or stamp approved by the department under the provisions of this part.

(d) "Licensed retailer" means any person, other than a wholesaler, subjobber, or cigarette vendor, who is licensed under the provisions of this part.

(e) "Licensed subjobber" means a subjobber licensed under the provisions of this part. The person must be treated as a wholesaler.

(f) "Licensed wholesaler" means a wholesaler licensed under the provisions of this part.

(g) "Manufacturer" means any person who fabricates cigarettes from raw materials for the purpose of resale.

(h) "Public warehouses" means agents or representatives of manufacturers who receive cigarettes in carload lots for distribution in original cases to wholesalers and retailers.

(i) "Record" means an original document, a legible facsimile, or an electronically preserved copy.

(j) "Retailer" means a person who operates a store, stand, booth, concession, or other outlet for the purpose of selling cigarettes at retail.

(k) "Sale" or "sell" means any transfer of cigarettes for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means.

(l) "Sole distributor" means a person who either causes a unique brand of cigarettes to be manufactured according to distinctive specifications and acts as the exclusive distributor of the cigarettes or is the exclusive distributor of a brand of cigarettes within the continental United States.

(m) "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the Montana cigarette tax insignia affixed and sells or offers to sell the cigarettes to a licensed retailer or cigarette vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute those retailers as subjobbers. A licensed subjobber shall use the license in the interest of the general public. If during any month more than 35% of the volume of cigarette sales by a subjobber is with any retail client whose business is controlled directly or indirectly through consanguinity or affinity with the owner or employer for that retail business, the license is considered to have been used or to be intended to be used in violation of this part.

(n) "Wholesaler" means a person who services retail outlets by maintaining an established place of business for the purchase of cigarettes and who:

(i) purchases cigarettes from a manufacturer for the purpose of selling cigarettes to retailers; or

(ii) purchases cigarettes from a sole distributor, another wholesaler, or any other person for the purpose of selling cigarettes to retailers.

History: En. Sec. 1, Ch. 140, L. 1969; amd. Sec. 205, Ch. 516, L. 1973; amd. Sec. 1, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.2; amd. Sec. 1, Ch. 130, L. 1991; amd. Sec. 12, Ch. 578, L. 1995.

Cross-References

Consumer protection and unfair trade practices, Title 30, ch. 14, parts 1 and 2.

16-11-103. Powers of department. (1) The department shall have the power and authority to prescribe all rules not inconsistent with the provisions of this part for the detailed and efficient administration of this part. All rules and orders promulgated must be published promptly and a copy distributed to each wholesale licensee. The department is authorized to adopt rules for the effective collection and refund of the tax imposed by part 2 of this chapter.

(2) The department and its duly authorized agents are empowered to conduct inquiries and hearings, and any member of the department or any agent is authorized to administer oaths and take testimony under oath relative to the matter of inquiry. The director or an authorized agent may subpoena witnesses and require the production of books, papers, and documents pertinent to the inquiry. The director or the director's agent, after the hearing, shall make findings and an order in writing, which findings and order must be filed in the office of the department and open for public inspection.

(3) The department is authorized to contract with the department of justice for the investigations required under this part. The department may appoint additional assistants and establish an additional division of cigarette enforcement as required to carry out the provisions of this part.

(4) The department and the department of justice are authorized to employ clerical and field assistants necessary to properly administer the provisions of this part.

History: (1)Ap. p. Sec. 26, Ch. 140, L. 1969; amd. Sec. 219, Ch. 516, L. 1973; Sec. 84-5606.27, R.C.M. 1947; Ap. p. Sec. 7, Ch. 12, Ex. L. 1969; amd. Sec. 254, Ch. 516, L. 1973; Sec. 84-6807, R.C.M. 1947; (2)En. Sec. 22, Ch. 140, L. 1969; amd. Sec. 110, Ch. 405, L. 1973; Sec. 84-5606.23, R.C.M. 1947; (3)En. Sec. 27, Ch. 140, L. 1969; amd. Sec. 220, Ch. 516, L. 1973; Sec. 84-5606.28, R.C.M. 1947; (4)En. Sec. 29, Ch. 140, L. 1969; amd. Sec. 5, Ch. 222, L. 1971; amd. Sec. 222, Ch. 516, L. 1973; Sec. 84-5606.30, R.C.M. 1947; R.C.M. 1947, 84-5606.23, 84-5606.27, 84-5606.28(part), 84-5606.30(part), 84-6807; amd. Sec. 17, Ch. 414, L. 1993.

Cross-References

Rulemaking under Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

16-11-104. Carriers to report cigarette shipments. Every common carrier hauling, transporting, or shipping into or out of the state of Montana from or to any other state any cigarettes shall, if requested by the department, report in writing such shipments or deliveries to the department on forms furnished by the department, giving the date, the person to whom the same was consigned and delivered, the quantity as shown by the bill of lading, and such other information as the department may require. A carrier shall retain for 30 months all pertinent and relevant records necessary for the preparation of this report and any other information the department may require.

History: En. Sec. 19, Ch. 140, L. 1969; amd. Sec. 215, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.20; amd. Sec. 3, Ch. 207, L. 1991.

Cross-References

Regulation of carriers of property, Title 69, ch. 11, part 4.

16-11-105. Rulemaking authority of department of justice. The department of justice may adopt rules to implement 16-11-103, 16-11-118, 16-11-124, 16-11-141, 16-11-142, 16-11-147, and 16-11-149.

History: En. Sec. 28, Ch. 414, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

16-11-106 through 16-11-109 reserved.

16-11-110. Signature alternatives for electronically filed returns. For purposes of Title 15, chapters 1, 2, 6 through 10, 15 through 18, 23, 24, 30 through 33, 35 through 38, 44, 50, 51, 53, 59 through 61, and 65, and Title 16, chapter 11, the director of revenue, and for the purposes of Title 15, chapter 70, the director of the department of transportation, may prescribe, by rule, methods for signing, subscribing, or verifying electronically filed tax returns. Returns electronically filed in accordance with the methods adopted by rule have the same validity and consequences as physical forms signed by a taxpayer.

History: En. Sec. 2, Ch. 572, L. 1995; amd. Sec. 1, Ch. 6, L. 1997; Sec. 15-30-211, MCA 1995; redes. 16-11-110 by Sec. 2, Ch. 6, L. 1997.

16-11-111. Cigarette sales tax — exemption for sale to tribal member. (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is 18 cents on each package containing 20 cigarettes and, when packages contain other than 20 cigarettes, a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a credit or refund. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; R.C.M. 1947, 84-5606(2) thru (4); amd. Sec. 1, Ch. 267, L. 1981; amd. Sec. 1, Ch. 608, L. 1983; amd. Sec. 1, Ch. 450, L. 1985; amd. Sec. 1, Ch. 704, L. 1985; amd. Sec. 2, Ch. 681, L. 1989; amd. Sec. 2, Ch. 130, L. 1991; amd. Sec. 25, Ch. 15, Sp. L. July 1992; amd. Sec. 8, Ch. 352, L. 1993; amd. Sec. 13, Ch. 578, L. 1995; amd. Sec. 1, Ch. 56, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 56 in (1)(a) near end after "packages contain" substituted "other than 20 cigarettes" for "more or less than 20 cigarettes"; inserted (1)(b) providing that the tax computed under subsection (1)(a) applies to illegally packaged cigarettes; and made minor changes in style. Amendment effective October 1, 2001.

Cross-References

Intent of this section, 16-11-101.
Disposition of taxes, 16-11-119.
Definitions, 16-11-155.
Percentage of cigarette tax pledged, 17-5-408.

16-11-112. Tax on ultimate consumer. All taxes paid pursuant to 16-11-111 shall be conclusively presumed to be direct taxes on the retail consumer precollected for the purpose of convenience and facility only. The full face value of the insignia or tax shall be added to the cost of the cigarettes and recovered from the ultimate consumer or user. When the tax is paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Any person selling cigarettes at retail shall state or separately display in the licensed premises a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section shall in no way affect the method of collection of such tax.

History: Ap. p. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; Sec. 84-5606, R.C.M. 1947; Ap. p. Sec. 9, Ch. 140, L. 1969; Sec. 84-5606.10, R.C.M. 1947; R.C.M. 1947, 84-5606(1), 84-5606.10(part).

16-11-113. Tax insignia. (1) Except as provided in this section, the wholesaler of any cigarettes shall cause to be securely affixed to the cigarettes the required insignia denoting the applicable tax.

(2) The insignia must be properly applied prior to sale, under regulations that the department may prescribe.

(3) Retailers licensed under this part may buy, sell, or have in their possession only cigarettes that have on each package the insignia provided for in this part. The insignia provided for in this part may be sold only to and must be affixed only by licensed wholesalers.

(4) If any cigarettes without the insignia affixed are found in the place of business of any unlicensed wholesaler, retailer, or other person, the presumption is that the cigarettes are kept in that place of business in violation of the provisions of this part.

(5) This section does not apply to a wholesaler who has cigarettes in possession that are either to be shipped or consigned to an Indian tribe that has entered into a cooperative agreement with the state or to a military reservation.

History: **(1) thru (3)En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; Sec. 84-5606, R.C.M. 1947; (4)En. Sec. 6, Ch. 140, L. 1969; Sec. 84-5606.7, R.C.M. 1947; (5)En. Sec. 27, Ch. 140, L. 1969; amd. Sec. 220, Ch. 516, L. 1973; Sec. 84-5606.28, R.C.M. 1947; R.C.M. 1947, 84-5606(part), 84-5606.7, 84-5606.28(part); amd. Sec. 1, Ch. 382, L. 1979; amd. Sec. 3, Ch. 130, L. 1991; amd. Sec. 14, Ch. 578, L. 1995.**

16-11-114. Insignia discount. Each licensed wholesaler is entitled to purchase an insignia at full face value less the following percentage of the face value upon payment for the insignia as defrayment of the costs of affixing insignia and precollecting the tax on behalf of the state of Montana:

(1) 6% for the first 2,580 cartons or portion thereof purchased in any calendar month;

(2) 4% for the next 2,580 cartons or portion thereof purchased in any calendar month; and

(3) 3% for purchases in excess of 5,160 cartons in any calendar month.

History: **En. Sec. 11, Ch. 140, L. 1969; R.C.M. 1947, 84-5606.12; amd. Sec. 2, Ch. 267, L. 1981; amd. Sec. 1, Ch. 600, L. 1983; amd. Sec. 15, Ch. 578, L. 1995.**

16-11-115. Tax meter machine — tax stamp-applying machine — purchase of stamps. (1) The department may authorize any wholesaler of cigarettes licensed under this part to use a tax meter machine to imprint an insignia upon each package of cigarettes imported, sold, or delivered in this state. The insignia must be one approved by the department. Each package of cigarettes imported into or delivered or sold in this state must be marked with the proper insignia of the tax-stamping meter, and any original package of cigarettes so marked may be lawfully possessed and sold within the state by any wholesaler licensed under this part. The department shall supervise and check the operation of the tax meter machines. Before using the machine, the operator of the machine shall take the machine's meter to the county treasurer of the county in which the machine is operated. The county treasurer shall set the meter for the number of packages specified and required by the operator. Prior to setting the meter, the county treasurer shall charge the operator the amount of money proper for the setting, less the expense defrayment provided for in 16-11-114. The county treasurer shall collect this amount in advance unless the department has allowed the purchaser credit as provided in 16-11-117. The county treasurer shall report to the department on forms prescribed by it the name of the licensed wholesaler and the number of packages for which the meter was set and shall forward to the department any amounts collected from the licensee.

(2) (a) The department may authorize a licensed wholesaler to affix tax stamps to packages of cigarettes with a heat-applied machine approved by the department. The department shall supervise and check the operation of the stamp-applying machine.

(b) Tax stamps applied as provided in this subsection must be purchased from the department, and payment for the stamps must accompany the order unless the department has allowed the purchaser to delay payment as provided in 16-11-117.

History: **En. Sec. 13, Ch. 140, L. 1969; amd. Sec. 210, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.13; amd. Sec. 2, Ch. 600, L. 1983; amd. Sec. 4, Ch. 130, L. 1991; amd. Sec. 16, Ch. 578, L. 1995.**

16-11-116. Resale of insignia prohibited — rebate. A wholesaler may not resell to any other wholesaler any insignia purchased from the department. A wholesaler who has on hand any meter settings or tax insignia at the time of discontinuing the business of selling cigarettes may apply to the department and be paid the face value of the meter settings or tax insignia less the amount of the expense defrayment allowed by 16-11-114.

History: **En. Sec. 13, Ch. 140, L. 1969; amd. Sec. 211, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.14; amd. Sec. 5, Ch. 130, L. 1991; amd. Sec. 17, Ch. 578, L. 1995.**

16-11-117. When payment for insignia due. The department may permit a licensed wholesaler to pay for the insignia purchased, or affixation of insignia, within 30 days. To be eligible to defer payment, a wholesaler shall file with the department either a surety bond or other cash security, as approved by the department, for the amount that the department may fix, but not in excess of an amount equal to the maximum insignia purchases incurred for any 30-day period in the previous calendar year. Any newly licensed wholesaler shall pay on a cash basis for 1 complete calendar year, after which the department may permit the wholesaler 30 days to pay for the purchase or affixation of insignia and shall require a bond or security as provided in this section.

History: En. Sec. 14, Ch. 140, L. 1969; amd. Sec. 212, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.15; amd. Sec. 18, Ch. 578, L. 1995.

16-11-118. Records of wholesalers. All wholesalers shall keep for 5 years all invoices of cigarettes purchased and imported, all receipts issued and insignia purchased, and an accurate record of all sales of cigarettes, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point, and the destination. A wholesaler shall permit the department and the department of justice and their assistants, authorized agents, or representatives to examine all cigarettes, invoices, receipts, books, paper, memoranda, and records as may be necessary to determine compliance with this chapter.

History: En. Sec. 16, Ch. 140, L. 1969; amd. Sec. 214, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.17; amd. Sec. 6, Ch. 130, L. 1991; amd. Sec. 18, Ch. 414, L. 1993; amd. Sec. 19, Ch. 578, L. 1995.

16-11-119. Disposition of taxes. Cigarette taxes collected under the provisions of 16-11-111 must be allocated as follows:

(1) The amount of 11.11% of the cigarette tax collected on each package of cigarettes must be deposited in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes.

(2) The amount of 73.04% must, in accordance with the provisions of 15-1-501, be deposited in the state general fund.

(3) The amount of 15.85% must, in accordance with the provisions of 15-1-501, be deposited in the long-range building program account provided for in 17-7-205.

History: En. Sec. 29, Ch. 140, L. 1969; amd. Sec. 5, Ch. 222, L. 1971; amd. Sec. 222, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.30(part); amd. Sec. 3, Ch. 267, L. 1981; amd. Sec. 7, Ch. 281, L. 1983; amd. Sec. 2, Ch. 608, L. 1983; amd. Sec. 2, Ch. 704, L. 1985; amd. Sec. 3, Ch. 681, L. 1989; amd. Sec. 1, Ch. 3, Sp. L. July 1992; amd. Sec. 26, Ch. 15, Sp. L. July 1992; amd. Sec. 29, Ch. 455, L. 1993; amd. Sec. 1, Ch. 548, L. 1993; amd. Sec. 29, Ch. 18, L. 1995; amd. Sec. 2, Ch. 456, L. 1995; amd. Sec. 54, Ch. 546, L. 1995; amd. Sec. 17, Ch. 422, L. 1997.

Cross-References

Percentage of cigarette tax pledged to debt service of public bond issues, 17-5-408.

16-11-120. Cigarette licenses. Every wholesaler, subjobber, retailer, or cigarette vendor shall obtain a license from the department before engaging in the business of wholesaler, subjobber, retailer, or cigarette vendor. A separate application and a separate license is required for each place of business owned, controlled, or operated by the wholesaler, subjobber, retailer, or cigarette vendor within the state of Montana. Application forms must include the type and general description of applicant organizations, names of all known owners, and other pertinent information as the department may require in regularly promulgated rules. The department shall comply with rules issued by the board of review established in 30-16-302 with respect to the form of electronic verification of information required or acceptable for licensing purposes.

History: En. Sec. 2, Ch. 140, L. 1969; amd. Sec. 206, Ch. 516, L. 1973; amd. Sec. 2, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.3; amd. Sec. 2, Ch. 366, L. 1997.

16-11-121. Vending machines not places of business. Cigarette vending machines may not be considered as places of business per se, but a report of each machine must be made on forms prescribed by the department. The form must include the name and address of the cigarette vendor, the assigned location of each machine, with best machine identification available, type of business, and other information that the department may require for proper administration of this part.

History: En. Sec. 3, Ch. 140, L. 1969; amd. Sec. 207, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.4; amd. Sec. 20, Ch. 578, L. 1995.

16-11-122. License fees — renewal. (1) Each application for a wholesaler's license must be accompanied by a fee of $50.

(2) Each application for a subjobber's license must be accompanied by a fee of $50.

(3) Each application for a retailer's license must be accompanied by a fee of $5.

(4) The fees for the licenses in subsections (2) and (3) may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.

(5) These licenses must be renewed annually on or before the anniversary date established by rule by the board of review established in 30-16-302 and upon payment of the annual fee and are effective for 1 year, without proration, and are not transferable.

History: En. Sec. 4, Ch. 140, L. 1969; amd. Sec. 3, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.5(part); amd. Sec. 3, Ch. 366, L. 1997.

16-11-123. Display of license. (1) Each license shall be prominently displayed on the licensed premises, and a separate license shall be displayed at each place of business owned, controlled, or operated by such wholesaler, subjobber, retailer, or cigarette vendor.

(2) Each cigarette vendor shall affix a license decal furnished by the department in a prominent position on each vending machine.

History: En. Sec. 4, Ch. 140, L. 1969; amd. Sec. 3, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.5(part).

16-11-124. Disposition of license fees. (1) All license fees collected under the provisions of this part must be deposited with the state treasurer in the general fund.

(2) Each biennium, there must be appropriated to the department and the department of justice an amount justified and reasonable to operate the cigarette enforcement responsibilities of each department.

(3) All expenses charged against the appropriation must be justified by itemized claims coupled with standard accounting reports.

History: En. Sec. 5, Ch. 140, L. 1969; amd. Sec. 208, Ch. 516, L. 1973; amd. Sec. 6, Ch. 286, L. 1977; R.C.M. 1947, 84-5606.6(part); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 351, L. 1989; amd. Sec. 19, Ch. 414, L. 1993.

16-11-125. Licensure as both wholesaler and retailer allowed. This chapter does not prevent a person from being licensed as both a wholesaler and a retailer.

History: En. Sec. 1, Ch. 578, L. 1995.

16-11-126 through 16-11-130 reserved.

16-11-131. Transporting cigarettes without insignia a misdemeanor — invoices and delivery tickets required — stop and inspection authorized. (1) It is unlawful for a person to transport into, receive, carry, or move from place to place within this state, except in the course of interstate commerce, any cigarettes that do not bear the insignia (stamps) required by this part.

(2) (a) When transporting unstamped cigarettes, a person shall possess invoices or delivery tickets for the cigarettes that show the name and address of the consignor or seller, the name of the consignee or purchaser, and the quantity and brands of the cigarettes being transported.

(b) The cigarettes transported are subject to seizure, forfeiture, and sale as provided in 16-11-141, 16-11-147, 16-11-158, and this section if:

(i) there are no invoices or delivery tickets;

(ii) the name or address of the consignee or purchaser is falsified; or

(iii) the consignee or purchaser is not authorized to possess unstamped cigarettes.

(3) Transportation of cigarettes from a point outside the state to a point in another state is not a violation of this section if the person transporting the unstamped cigarettes possesses adequate invoices or delivery tickets that give the name and address of the out-of-state consignor or seller and the out-of-state consignee or purchaser.

(4) If the department, its authorized agent, the department of justice, or a peace officer of the state has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes in violation of this section, the department, its agent, the department of justice, or a peace officer may stop and inspect the vehicle.

(5) A person violating the provisions of this section is guilty of a misdemeanor.

History: **En. Sec. 20, Ch. 140, L. 1969; amd. Sec. 216, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.21(part); amd. Sec. 2, Ch. 382, L. 1979; amd. Sec. 9, Ch. 352, L. 1993; amd. Sec. 21, Ch. 578, L. 1995.**

16-11-132. Unlawful to sell cigarettes without valid license — exceptions. (1) A person may not sell, offer to sell, or possess with intent to sell any cigarettes, at wholesale or retail, unless the person's license is current and valid under the provisions of this part.

(2) A person may not sell, offer to sell, or possess with intent to sell any cigarettes, at wholesale or retail, to a resident or nonresident wholesaler, subjobber, or retailer who is not licensed under this part or who is not licensed by the state in which the person sells, offers to sell, or intends to sell cigarettes. However, a wholesaler, subjobber, or retailer licensed under the provisions of this chapter may sell cigarettes to any person, wholesaler, subjobber, or retailer not licensed under this chapter if:

(a) the person, wholesaler, subjobber, or retailer is exempt from state cigarette taxation provisions;

(b) the person, wholesaler, subjobber, or retailer furnishes documentary evidence of exemption from state cigarette taxation provisions; and

(c) the person, wholesaler, subjobber, or retailer signs a receipt of purchase for any cigarettes evidencing an exemption from state cigarette taxation provisions.

(3) A person violating the provisions of this section is guilty of a misdemeanor and shall be punished as provided in this part, and all cigarettes in the person's possession must be seized and forfeited to the state.

History: **En. Sec. 8, Ch. 140, L. 1969; amd. Sec. 1, Ch. 319, L. 1973; R.C.M. 1947, 84-5606.9; amd. Sec. 3, Ch. 382, L. 1979; amd. Sec. 22, Ch. 578, L. 1995.**

16-11-133. Sale and use of cigarettes without insignia unlawful. A person who sells any package of cigarettes that does not bear the insignia required by this part and a person who uses or consumes a cigarette within this state, taken from a package that does not bear the required insignia, is guilty of a misdemeanor.

History: **En. Sec. 17, Ch. 140, L. 1969; amd. Sec. 12, Ch. 126, L. 1977; R.C.M. 1947, 84-5606.18; amd. Sec. 4, Ch. 382, L. 1979; amd. Sec. 23, Ch. 578, L. 1995.**

16-11-134. Forged license stamp or insignia. Every person who shall make, alter, forge, or counterfeit any license stamp or insignia provided for in this law or who shall assist or be concerned therein or who shall have in his possession any altered, forged, counterfeit, or spurious stamp, license, or insignia with intent to defraud the state is guilty of forgery.

History: **En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; R.C.M. 1947, 84-5606(part).**

Cross-References

Penalty, 16-11-146.

Criminal offense of and punishment for forgery, 45-6-325.

16-11-135 through 16-11-140 reserved.

16-11-141. Powers of arrest — search and seizure. The department of justice is a criminal justice agency. Designated agents of the department of justice have peace officer status and may arrest any person violating any provision of this part, enter a complaint before any court of competent jurisdiction, and lawfully search and seize and use as evidence any unlawful or unlawfully possessed license, stamp, or insignia found in the possession of any person or in any place.

History: **En. Sec. 25, Ch. 140, L. 1969; amd. Sec. 112, Ch. 405, L. 1973; amd. Sec. 13, Ch. 126, L. 1977; R.C.M. 1947, 84-5606.26; amd. Sec. 20, Ch. 414, L. 1993.**

Cross-References

Searches and seizures generally, Art. II, sec. 11, Mont. Const.

Search and seizure, Title 46, ch. 5.

Arrest, Title 46, ch. 6.

16-11-142. Duties of county attorneys and peace officers. In the enforcement of this part, the department of justice may call to its assistance, and it is the duty of any county attorney or any peace officer in this state to assist the department of justice in the enforcement of this part.

History: En. Sec. 27, Ch. 140, L. 1969; amd. Sec. 220, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.28(part); amd. Sec. 21, Ch. 414, L. 1993.

16-11-143. Penalty and interest for unpaid cigarette tax. (1) If a person fails or refuses to pay the tax required by this part when due, the department shall proceed to determine the tax due from the information that the department can obtain and shall assess the tax plus penalty and interest as provided in 15-1-216.

(2) In the case of any violation of this chapter, the department may sue, in the district where the department maintains its principal office, for the amount of the unpaid tax, penalty, and costs, including reasonable expense of the department in effecting collection of the unpaid tax and penalty. When the court finds that the failure to pay the tax has been willful, the court shall, in addition, assess damages in treble the amount of the tax found to be due.

History: En. Secs. 15, 28, Ch. 140, L. 1969; amd. Secs. 213, 221, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.16, 84-5606.29; amd. Sec. 24, Ch. 578, L. 1995; amd. Sec. 50, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

16-11-144. Revocation or suspension of license. (1) The department may revoke or suspend the license of any wholesaler, subjobber, retailer, cigarette vendor, or person licensed under 16-11-303 for failure to comply with any provision of this part, The Montana Cigarette Sales Act (Title 16, chapter 10), the Youth Access to Tobacco Products Control Act (Title 16, chapter 11, part 3), or with any lawful rule of the department made pursuant to those laws.

(2) A person aggrieved by a revocation or suspension may apply to the department for a hearing, which must be open to the public. If the person is aggrieved by the decision of the department, the person may further appeal to the court.

(3) When a license has been revoked, a license may not be issued to the licensee for a period of 1 year after revocation. When a license has been suspended, the suspension may be for any period not to exceed 1 year.

(4) A person who sells cigarettes after the person's license has been revoked or suspended is guilty of a misdemeanor and must be punished as provided in this part, and all cigarettes in the person's possession must be seized and forfeited to the state.

History: En. Sec. 7, Ch. 140, L. 1969; amd. Sec. 209, Ch. 516, L. 1973; amd. Sec. 4, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.8; amd. Sec. 1, Ch. 439, L. 1995; amd. Sec. 25, Ch. 578, L. 1995.

Cross-References

Tax appeals, Art. VIII, sec. 7, Mont. Const.

Contested cases — hearing under Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

16-11-145. Place where violations committed a public nuisance. Each person having possession or control of or who maintains a building or place where cigarettes are sold in violation of this part or who permits the cigarettes to be sold in violation of this part in any place or building possessed, controlled, or maintained by that person is guilty of maintaining and keeping a nuisance. The building or place so used, together with the personal property and fixtures used in connection therewith, is considered a nuisance. The person must be enjoined and the building or place, personal property, and fixtures abated as a nuisance at the instance of the state.

History: En. Sec. 18, Ch. 140, L. 1969; R.C.M. 1947, 84-5606.19; amd. Sec. 26, Ch. 578, L. 1995.

Cross-References

Injunctions, Title 27, ch. 19.

Public nuisances — remedies, Title 27, ch. 30, part 2.

16-11-146. Penalty for forged license stamp or insignia. A person found guilty of forgery under 16-11-134 shall be punished by imprisonment in the state prison for not less than 1 year or more than 14 years.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; R.C.M. 1947, 84-5606(part).

16-11-147. Seizure and forfeiture of unlawful cigarettes. (1) A motor vehicle, airplane, conveyance, vehicle, or other means of transportation in which cigarettes are being unlawfully transported, together with the cigarettes and other equipment or personal property used in connection with and found in that transportation, is subject to seizure by the department of justice, its authorized agent, a sheriff or deputy, or any other peace officer and is subject to forfeiture as provided in subsection (2).

(2) Upon the seizure of any cigarettes and within 2 days after seizure, the person or officer making the seizure shall deliver an inventory of the property seized to the person from whom the seizure was made, or any other person having a right or interest in the seized property, if known, and file a copy of the inventory with the department.

(3) If a person other than the person from whom the property was seized as described in subsection (2) does not notify the department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of the inventory required in subsection (2), the seized property is considered forfeited.

(4) If a person notifies the department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of inventory required in subsection (2), the person is entitled to a hearing on the claim or right. The hearing must be held before the department director or the director's designee, with the assistance of the department of justice, in accordance with the Montana Administrative Procedure Act. If the aggregate value of the seized property is more than $500, a person seeking the return of the property may, in lieu of requesting a hearing, bring an action in the district court of the county in which the property was seized.

History: En. Secs. 20, 21, Ch. 140, L. 1969; amd. Secs. 216, 217, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.21(part), 84-5606.22; amd. Sec. 254, Ch. 800, L. 1991; amd. Sec. 10, Ch. 352, L. 1993; amd. Sec. 22, Ch. 414, L. 1993.

Cross-References

Procedure regarding seized property, Title 46, ch. 5, part 3.

16-11-148. Violation a misdemeanor unless otherwise provided — penalties. Unless otherwise provided, the violation of any provision of this part constitutes a misdemeanor. A person violating any provision of this part shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not less than 30 days or more than 6 months, or both. If the person is the holder of a license issued under this part, the license must be revoked by the department for 1 year.

History: En. Sec. 30, Ch. 140, L. 1969; amd. Sec. 223, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.31; amd. Sec. 27, Ch. 578, L. 1995.

Cross-References

Place of imprisonment when none specified — sentence for 1 year or less, 46-18-211.

16-11-149. Hearings before state tax appeal board. A person aggrieved by any action of the department or its authorized agents under the provisions of this part, except for a revocation of a license pursuant to 16-11-144, may apply to the state tax appeal board, in writing, for a hearing or rehearing within 30 days after the action of the department or its authorized agents. The board shall promptly consider the application, set the application for hearing, and notify the applicant of the time and place fixed for the hearing or rehearing, which may be at its office or in the county of the applicant. After the hearing or rehearing, the board may make any further or other order in the premises as it may consider proper and lawful and shall furnish a copy to the applicant. The department, on its own initiative, may order a contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with the administration of this part upon at least 10 days' notice in writing to the person or persons to be investigated.

History: En. Sec. 23, Ch. 140, L. 1969; amd. Sec. 111, Ch. 405, L. 1973; amd. Sec. 7, Ch. 155, L. 1977; R.C.M. 1947, 84-5606.24; amd. Sec. 23, Ch. 414, L. 1993; amd. Sec. 28, Ch. 578, L. 1995.

Cross-References

Tax appeals, Art. VIII, sec. 7, Mont. Const.

Contested cases — hearing under Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

State Tax Appeal Board, Title 15, ch. 2.

16-11-150. Appeal to district court. Any person aggrieved by any action or decision of the state tax appeal board or a licensing decision of the department made under the provisions of this part may appeal therefrom to the district court in accordance with the Montana Administrative Procedure Act.

History: En. Sec. 24, Ch. 140, L. 1969; amd. Sec. 218, Ch. 516, L. 1973; amd. Sec. 8, Ch. 155, L. 1977; R.C.M. 1947, 84-5606.25.

Cross-References

Judicial review under Montana Administrative Procedure Act, Title 2, ch. 4, part 7.

16-11-151 through 16-11-154 reserved.

16-11-155. Definitions. As used in 16-11-111 and 16-11-155 through 16-11-158, the following definitions apply:

(1) "Indian reservation" means lands declared to be a reservation for an Indian tribe or tribes:

(a) by a treaty between the tribe and a territorial government, a state government, or the United States;

(b) through an act of the United States congress; or

(c) through an executive order of the United States.

(2) "Quota" means 150% of the national average individual consumption of cigarettes multiplied by the enrolled tribal member population of an Indian reservation on which the cigarette sales are made or any other formula or amount agreed to in a state-tribal cooperative agreement.

History: En. Sec. 1, Ch. 352, L. 1993.

16-11-156. Stamps affixed on cigarettes — exception. Except for cigarettes sold on a military reservation, cigarettes sold in Montana must have a Montana cigarette tax stamp affixed prior to sale.

History: En. Sec. 2, Ch. 352, L. 1993.

16-11-157. Possession or unauthorized transportation of unstamped cigarettes — civil penalty. (1) In lieu of the criminal penalties provided in 16-11-131, 16-11-146, and 16-11-148, the department may assess a person who unlawfully possesses or transports unstamped cigarettes a civil penalty of $250 for the first full or partial pack of unstamped cigarettes and $10 for each additional full or partial pack of unstamped cigarettes.

(2) The department shall determine the amount of the penalty provided in subsection (1) and notify the person who unlawfully possessed or transported the unstamped cigarettes of the amount. The penalty is due and payable on the date of the notice. A penalty not paid when due is subject to interest at the rate of 10% a year.

History: En. Sec. 6, Ch. 352, L. 1993.

16-11-158. Sale or retention of forfeited property — use of sale proceeds. (1) When property is forfeited under 16-11-147, the department may:

(a) retain the property or any part of the property for official use or, upon application by a law enforcement agency of this state, another state, the District of Columbia, or the United States, for the exclusive use of enforcing the provisions of 16-11-111, 16-11-131, 16-11-147, and 16-11-155 through 16-11-158 or the laws of another state, the District of Columbia, or the United States; or

(b) after advertising, sell the property at public auction to the highest bidder. The department, before delivering a seized item, shall first require stamps to be affixed.

(2) The proceeds of a sale under this section must be applied first to paying the expenses of any investigation leading to the seizure of the items, including costs incurred by a local, state, tribal, or federal law enforcement agency, and of the forfeiture and sale proceedings, including the expenses of seizure, maintenance, custody, and court costs. The balance of the proceeds, less an amount that is based on the value of the property seized on an Indian reservation and that is allocated to a tribe pursuant to a state-tribal cooperative agreement, must be deposited in the state general fund.

History: En. Sec. 7, Ch. 352, L. 1993.

Cross-References

Procedure in regard to seized property, Title 46, ch. 5, part 3.

Part 2

Tax on Tobacco Products Other Than Cigarettes

16-11-201. Definitions. As used in this part, the following definitions apply, unless the context requires otherwise:

(1) "Retailer" means any person other than a wholesaler who is engaged in the business of selling tobacco products to the ultimate consumer.

(2) "Sale" or "sell" means any transfer of tobacco products for a consideration, exchange, barter, gift, offer for sale, or distribution, in any manner or by any means.

(3) "Tobacco product" means a substance other than cigarettes that is intended for human consumption and that contains tobacco.

(4) "Wholesale price" means the established price for which a manufacturer sells a tobacco product to a wholesaler or any other person before any discount or other reduction.

(5) "Wholesaler" means any person who purchases tobacco products directly from the manufacturer or from any other person who purchases from the manufacturer and who acquires the products for sale to retail dealers.

History: En. Sec. 1, Ch. 12, Ex. L. 1969; amd. Sec. 252, Ch. 516, L. 1973; R.C.M. 1947, 84-6801(4) thru (6); amd. Sec. 29, Ch. 578, L. 1995.

16-11-202. Tax on sale of tobacco other than cigarettes — imposed on retail consumer — rate of tax. (1) All taxes paid pursuant to the provisions of this section are considered to be direct taxes on the retail consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any other person, the payment is considered as an advance payment and must be added to the price of tobacco products and recovered from the ultimate consumer or user. Any person selling tobacco products at retail shall state or separately display in the premises where the products are sold a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section do not affect the method of collection of the tax as provided in this part.

(2) There must be collected and paid to the state of Montana a tax of 12 ½% of the wholesale price of all tobacco products to the wholesaler. Tobacco products shipped from Montana and destined for retail sale and consumption outside the state are not subject to this tax.

History: En. Sec. 2, Ch. 12, Ex. L. 1969; R.C.M. 1947, 84-6802; amd. Sec. 27, Ch. 15, Sp. L. July 1992; amd. Sec. 30, Ch. 578, L. 1995.

Cross-References

Percentage of tax pledged — tobacco products other than cigarettes, 17-5-408.

16-11-203. Wholesaler to precollect tax — penalty and interest. The tax imposed must be precollected and paid by the wholesaler to the department prior to the sale of tobacco products. A wholesaler who fails to report or pay the tax required by this part must be assessed penalty and interest as provided in 15-1-216.

History: En. Sec. 3, Ch. 12, Ex. L. 1969; R.C.M. 1947, 84-6803; amd. Sec. 31, Ch. 578, L. 1995; amd. Sec. 51, Ch. 427, L. 1999.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

16-11-204. Wholesaler's sale without tax prepayment a misdemeanor — penalty. A wholesaler who sells any tobacco products without first making payment of the tax provided for by this part or at the time specified shall be guilty of a misdemeanor and must be enjoined by an action pursued in the district court of Lewis and Clark County, Montana, from making further sale of tobacco products for a period not less than 1 month or more than 1 year.

History: En. Sec. 4, Ch. 12, Ex. L. 1969; R.C.M. 1947, 84-6804; amd. Sec. 32, Ch. 578, L. 1995.

Cross-References

Injunctions, Title 27, ch. 19.

Penalty for misdemeanor statute not setting penalty, 46-18-212.

16-11-205. Unlawful sales — penalty. It shall be unlawful for any person, individual, firm, or corporation to sell or offer to sell any tobacco products subject to this tax without the tax having been prepaid as provided for in this part. Violation of this section shall constitute a misdemeanor punishable by a fine of not more than $500 or imprisonment for not more than 6 months.

History: En. Sec. 5, Ch. 12, Ex. L. 1969; R.C.M. 1947, 84-6805.

Cross-References

Place of imprisonment when none specified — sentence for 1 year or less, 46-18-211.

16-11-206. Wholesaler's discount — disposition of taxes. The taxes specified in this part that are paid by the wholesaler must be paid to the department in full less a 5% defrayment for the wholesaler's collection and administrative expense and must, in accordance with the provisions of 15-1-501, be deposited by the department in the state general fund. Refunds of the tax paid must be made as provided in 15-1-503 in cases in which the tobacco products purchased become unsalable.

History: En. Sec. 6, Ch. 12, Ex. L. 1969; amd. Sec. 253, Ch. 516, L. 1973; R.C.M. 1947, 84-6806; amd. Sec. 8, Ch. 281, L. 1983; amd. Sec. 30, Ch. 455, L. 1993; amd. Sec. 30, Ch. 18, L. 1995; amd. Sec. 18, Ch. 422, L. 1997.

Part 3

Youth Access to Tobacco Products Control Act

Part Cross-References

Tobacco possession or consumption by persons under 18 years of age prohibited — penalties, 45-5-637.

16-11-301. Short title. This part may be cited as the "Youth Access to Tobacco Products Control Act".

History: En. Sec. 1, Ch. 569, L. 1993.

16-11-302. Definitions. For the purposes of 16-11-301 through 16-11-308, the following definitions apply:

(1) "Distribute" means:

(a) to give, deliver, sample, or sell;

(b) to offer to give, deliver, sample, or sell; or

(c) to cause or hire another person to give, deliver, sample, or sell or offer to give, deliver, sample, or sell.

(2) "Health warning" means a tobacco product label required by federal law and intended to alert users of the product to the health risks associated with tobacco use. The term includes warning labels required under the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health Education Act of 1986.

(3) "License" means a retail tobacco product sales license.

(4) "Person" means a natural person, company, corporation, firm, partnership, organization, or other legal entity.

(5) "Tobacco product" means a substance intended for human consumption that contains tobacco. The term includes cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.

History: En. Sec. 2, Ch. 569, L. 1993.

16-11-303. License for retail sale of tobacco products. (1) A person may not sell tobacco products at retail, whether over the counter, by vending machine, or otherwise, without a license obtained from the department of revenue.

(2) A license for the retail sale of tobacco products may be obtained from the department of revenue.

(3) The fee collected by the department must be deposited in the general fund.

History: En. Sec. 3, Ch. 569, L. 1993.

16-11-304. Signs. A retail seller of tobacco products shall conspicuously display, at each place on the premises at which tobacco products are displayed and sold, a sign that is to be provided without charge by the department of revenue that states: "Montana law prohibits the sale of tobacco products to persons under 18 years of age."

History: En. Sec. 4, Ch. 569, L. 1993; amd. Sec. 2, Ch. 439, L. 1995.

16-11-305. Sale or distribution of tobacco products to persons under 18 years of age prohibited. (1) A person may not sell or distribute a tobacco product to an individual under 18 years of age, whether over the counter, by vending machine, or otherwise.

(2) If there is a reasonable doubt as to the individual's age, the seller shall require presentation of a driver's license or other generally accepted identification that includes a picture of the individual.

History: En. Sec. 5, Ch. 569, L. 1993.

16-11-306. Sales of tobacco through vending machines restricted. (1) Tobacco products may be sold through a vending machine only in places where alcoholic beverages are sold and consumed on the premises and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the establishment. The tobacco products must be in a vending machine that contains only tobacco products.

(2) Tobacco products may not be sold through a vending machine that is located in a restaurant unless the restaurant has a bar, the restaurant area shares seating with the bar area, and the vending machine meets the requirements of subsection (1).

(3) The sale of tobacco products from a vending machine under the direct line-of-sight supervision of an owner or employee is considered a sale of tobacco products by the owner or employee for the purposes of 16-11-305.

History: En. Sec. 6, Ch. 569, L. 1993; amd. Sec. 1, Ch. 518, L. 1997.

16-11-307. Distribution of tobacco products in other than sealed packages prohibited — minimum package size. (1) A person may not distribute a tobacco product for commercial purposes in other than a sealed package that is provided by the manufacturer and that contains the health warning required by federal law. Single cigarettes may not be sold.

(2) A person may not knowingly manufacture or distribute for commercial purposes cigarettes in a package containing fewer than 20 cigarettes or rolling tobacco in a package containing less than 0.6 ounces net weight of tobacco. For purposes of 16-11-308 and this section, "rolling tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes.

History: En. Sec. 7, Ch. 569, L. 1993; amd. Sec. 3, Ch. 439, L. 1995; amd. Sec. 2, Ch. 56, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 56 inserted (2) prohibiting distribution or manufacture of cigarettes in packages of less than 20 and defining rolling tobacco; and made minor changes in style. Amendment effective October 1, 2001.

16-11-308. Civil penalties — license suspension — tobacco education fee. (1) Failure to obtain a license, as required by 16-11-303, failure to post signs, as provided in 16-11-304, or the manufacture or sale of cigarettes or rolling tobacco in violation of the minimum package size requirements of 16-11-111 or 16-11-307 is punishable by a civil penalty of $100. The department may collect the penalty in the manner provided for the collection of other debts.

(2) A person who violates 16-11-305(1) or 16-11-307(1) at any one location within a 3-year period shall be punished as follows:

(a) A first through third offense is punishable by a verbal notification of violation.

(b) A fourth offense is punishable by a written notice of violation to be sent by the department of public health and human services to the owner of the establishment.

(c) A fifth offense is punishable by assessment against the owner of the establishment of a tobacco education fee of $500. The employee or other person who sold the tobacco product, the establishment manager, and the establishment owner, if the owner is a sole proprietor or partner, shall read and view the tobacco education material.

(d) A sixth offense under 16-11-305(1) or 16-11-307(1) or a third offense under 16-11-307(2) is punishable by suspension of the licenses required by 16-11-120 and 16-11-303 for 3 months.

(e) A seventh and subsequent offense under 16-11-305(1) or 16-11-307(1) or a fourth and subsequent offense under 16-11-307(2) is punishable by suspension of the licenses required by 16-11-120 and 16-11-303 for 1 year.

(3) After 2 years from the first violation, if a person has not received notice of any further violations, a second violation is considered a first violation for the purposes of subsection (2).

(4) A license may not be reissued after suspension under subsection (2)(d) or (2)(e) unless tobacco education fees or civil penalties are paid in full.

(5) Tobacco education fees must be assessed and collected by the department of public health and human services. Notice of an assessment pursuant to subsection (2) and this subsection must be made by the department of public health and human services within 30 days of the alleged violation by certified letter addressed to the establishment owner or manager. The notice of assessment against the owner of the establishment must provide an opportunity for a hearing. The hearing may be conducted using electronic equipment and must comply with the provisions of the Montana Administrative Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the owner or manager shall notify the department of public health and human services that the owner or manager objects to the assessment and request a hearing pursuant to this subsection.

(6) In addition to the penalty provided for in subsection (2), a first and subsequent violation of 16-11-305(1) or 16-11-307(1) is punishable by an assessment of a tobacco education fee of $25 against the employee who sold the tobacco product if the employee is not the owner of the establishment. The tobacco education fee must be assessed and collected by the department of public health and human services. Within 30 days of the alleged violation, notice of assessment pursuant to this subsection must be made by the department of public health and human services by certified letter addressed to the employee. The notice of assessment must provide an opportunity for a hearing. The hearing may be conducted using electronic equipment and must comply with the provisions of the Montana Administrative Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the employee shall notify the department of public health and human services that the employee objects to the assessment and requests a hearing pursuant to this subsection.

(7) The tobacco education material referred to in this section must be provided by the department of public health and human services in the form of written and video self-teaching materials. The education materials may be used only for the purposes provided in this section. Upon completion of the self-teaching materials, the establishment owner or manager shall execute a written statement on a form provided by the department of public health and human services verifying that the employee, owner, or manager, as appropriate, has read and viewed the self-teaching material and shall return the statement and the self-teaching video to the department of public health and human services.

(8) Upon the sixth and subsequent violation of this section, the department of public health and human services shall notify the department of revenue in writing to initiate suspension of the licenses required by 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged violation and of the referral of the licensee's record of violations to the department of revenue for suspension of the licenses pursuant to 16-11-144 and this section. The department of revenue shall review the record of violations and may initiate license suspension proceedings in accordance with 16-11-144. If, upon a review of the record of violations, the department of revenue declines to initiate suspension proceedings, the violation may not be charged against the licensee for the purposes of this section.

(9) Fees assessed pursuant to this section must be deposited in the state general fund.

History: En. Sec. 8, Ch. 569, L. 1993; amd. Sec. 4, Ch. 439, L. 1995; amd. Sec. 2, Ch. 518, L. 1997; amd. Sec. 10, Ch. 389, L. 1999; amd. Sec. 3, Ch. 56, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 56 in (1) near middle inserted "or the manufacture or sale of cigarettes or rolling tobacco in violation of the minimum package size requirements of 16-11-111 or 16-11-307"; in (2) near beginning substituted "16-11-307(1)" for "16-11-307"; in (2)(d) inserted "under 16-11-305(1) or 16-11-307(1) or a third offense under 16-11-307(2)"; in (2)(e) inserted "under 16-11-305(1) or 16-11-307(1) or a fourth and subsequent offense under 16-11-307(2)"; in (4) inserted "or civil penalties"; in (6) near beginning substituted "16-11-307(1)" for "16-11-307"; and made minor changes in style. Amendment effective October 1, 2001.

16-11-309. Inspection and notification of violation required. (1) The department of public health and human services shall conduct inspections of persons selling or distributing tobacco products to determine compliance with 16-11-303, 16-11-304, 16-11-305(1), 16-11-306, and 16-11-307. Inspections may be conducted directly by the department of public health and human services or may be provided for by contract let by the department of public health and human services. Persons found to be in violation of the requirements of this part or the rules of the department of public health and human services a fourth and subsequent time must be notified in writing by the department of public health and human services of the facts of the violation and the penalties provided by this part.

(2) The department of public health and human services shall provide documentation of alleged violations of 16-11-303, 16-11-305, and 16-11-307 to the department of revenue.

History: En. Sec. 5, Ch. 439, L. 1995.

16-11-310. Minors not liable for possession or attempt to purchase. An individual under 18 years of age assisting in the enforcement of this part is not liable under a civil or criminal law for the possession of or the attempt to purchase a tobacco product for the purposes of enforcing this part.

History: En. Sec. 6, Ch. 439, L. 1995; amd. Sec. 2, Ch. 498, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 498 inserted "or the attempt to purchase"; and made minor changes in style. Amendment effective October 1, 2001.

16-11-311. Local regulations. A local government may by ordinance adopt regulations on the subjects of 16-11-301 through 16-11-308 that are no more stringent than 16-11-301 through 16-11-308.

History: En. Sec. 10, Ch. 569, L. 1993.

16-11-312. Rulemaking authority. The department of revenue may adopt rules to implement 16-11-301 through 16-11-308.

History: En. Sec. 11, Ch. 569, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 4
Tobacco Products Reserve Fund

16-11-401. Findings and purpose. (1) Cigarette smoking presents serious public health concerns to the State and to the citizens of the State. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(2) Cigarette smoking also presents serious financial concerns for the State. Under certain health-care programs, the State may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(3) Under these programs, the State pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(4) It is the policy of the State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State to the extent that such manufacturers either determine to enter into a settlement with the State or are found culpable by the courts.

(5) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the State. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the State (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(6) It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State

will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

History: **En. Sec. 1, Ch. 412, L. 1999.**

16-11-402. Definitions. (1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(3) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(4) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (b) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (a) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

(5) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the State and leading United States tobacco product manufacturers.

(6) "Qualified escrow fund" means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least $1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with 16-11-403(2) of this Act.

(7) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

(8) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

(9) "Tobacco Product Manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(a) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(b) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(c) becomes a successor of an entity described in paragraph (a) or (b). The term "Tobacco Product Manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of paragraphs (a) - (c) above.

(10) "Units sold" means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the State. The department of revenue shall promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

History: En. Sec. 2, Ch. 412, L. 1999.

16-11-403. Requirements. Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following:

(1) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(2) (a) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation) —

1999: $.0094241 per unit sold after the date of enactment of this Act;
2000: $.0104712 per unit sold;
for each of 2001 and 2002: $.0136125 per unit sold;
for each of 2003 through 2006: $.0167539 per unit sold;
for each of 2007 and each year thereafter: $.0188482 per unit sold.

(b) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (a) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances-

(i) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (A) in the order in which they were placed into escrow and (B) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(iii) to the extent not released from escrow under subparagraphs (i) or (ii), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall-

(i) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(ii) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(iii) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years. Each failure to make an annual deposit required under this section shall constitute a separate violation.

History: En. Sec. 3, Ch. 412, L. 1999.

TITLE 17

STATE FINANCE

Ch.
1. General Administration.
2. Accounting.
3. Federal Revenues and Endowments.
4. Debt Collection.
5. Public Bond Issues.
6. Deposits and Investments.
7. Budgeting and Appropriations.
8. Disbursement and Expenditure.

CHAPTER 1

GENERAL ADMINISTRATION

Part 1 — General Administration and Fiscal Officers

17-1-101. Definition of department.
17-1-102. Uniform accounting system and expenditure control.
17-1-103. Assistance to legislature.
17-1-104 through 17-1-110 reserved.
17-1-111. General fiscal duties of state treasurer.
17-1-112. Access to offices.
17-1-113. Securities lending program.
17-1-114 through 17-1-120 reserved.
17-1-121. Repealed.
17-1-122. Discretionary authority of state treasurer.
17-1-123. Repealed.
17-1-124. Authority of state auditor concerning securities.
17-1-125 through 17-1-130 reserved.
17-1-131. General duties of budget director.
17-1-132. Access to information.

Part 2 — Anticipation of Revenue

17-1-201. Issuance of notes in anticipation of revenue.
17-1-202. Repealed.
17-1-203. Interest rate.
17-1-204. Payment — pledge of taxes and revenue — costs of issuance.

Parts 3 and 4 reserved

Part 5 — Dedication of Revenue to State Special Revenue Fund

17-1-501. Legislative intent.
17-1-502. Definitions.
17-1-503. Transfer of fund balances to general fund.
17-1-504. Effect of termination.
17-1-505. Review of dedicated revenue provisions.
17-1-506. Review of legislation.
17-1-507. Principles of revenue dedication.
17-1-508. Review of statutory appropriations.
17-1-509 reserved.
17-1-510. State indirect cost recovery plan.

Part 6 — Dedication of Revenue to Local Governments

17-1-601. Definitions.
17-1-602. Revenue dedication guidelines.
17-1-603. Review of dedicated revenue provisions.

Chapter Cross-References

Auditing officer to require affidavits of other officers — accounts, 2-2-205.
Personnel administration, 2-18-102.
Duty of Legislative Auditor to report violations of statute disclosed by audit, 5-13-304.
Duty of agency head to report violations of statute to Attorney General and Legislative Auditor, 5-13-309.
Public Contracts, Title 18.

Part 1
General Administration and Fiscal Officers

Part Cross-References

Audits of political subdivisions, Title 2, ch. 7, part 5.
Budget Director — preparation of fiscal note, 5-4-203.
Duties of Legislative Fiscal Analyst, 5-12-302.
Budget Director — approval of budget amendments, 5-12-401.

17-1-101. Definition of department. Except in chapter 3, part 3, and unless the context requires otherwise, in this title, "department" means the department of administration provided for in Title 2, chapter 15, part 10.

History: En. 82-108.1 by Sec. 44, Ch. 326, L. 1974; R.C.M. 1947, 82-108.1; amd. Sec. 6, Ch. 325, L. 1995.

17-1-102. Uniform accounting system and expenditure control. (1) The department shall establish a system of financial control so that the functioning of the various agencies of the state may be improved, duplications of work by different state agencies and employees may be eliminated, public service may be improved, and the cost of government may be reduced.

(2) The department shall prescribe and install a uniform accounting and reporting system for all state agencies and institutions, reporting the receipt, use, and disposition of all public money and property in accordance with generally accepted accounting principles.

(3) The uniform accounting and reporting system must contain three levels of expenditure. The first level must include general categories, such as personal services, operating expenses, equipment, capital outlay, local assistance, grants, benefits and claims, transfers, and debt service. The second level of expenditure must include specific categories of expenditures within each first-level category. The third level of expenditure must include specific items of expenditure within each category of the second level.

(4) All state agencies, including units of the university system but excluding community colleges, shall input all necessary transactions to the accounting system prescribed in subsection (2) before the accounts are closed at the end of the fiscal year in order to present the receipt, use, and disposition of all money and property for which the agency is accountable in accordance with generally accepted accounting principles, except that for budgetary control purposes, encumbrances that are required by generally accepted accounting principles to be reported as a reservation of fund balance must be recorded as expenditures and liabilities on the accounting records in accordance with the following requirements:

(a) Goods and services, grants, and local assistance that are paid for with the general fund, in whole or in part, may be encumbered. The general fund encumbrances must be reviewed by the department, and a specific extension plan must be presented by the encumbering agency to the department prior to the fiscal yearend. If a valid extension plan is not received and approved, the department shall delete the encumbrance at fiscal yearend. The department shall present a fiscal yearend report to the office of budget and program planning and to the legislative finance committee on each general fund encumbrance remaining at fiscal yearend.

(b) Nongeneral fund encumbrances also require a valid extension plan approved by the department at the end of each fiscal year. After 3 years, approved extensions must be included by the department in its fiscal yearend report to the office of budget and program planning and to the legislative finance committee.

History: (1)En. Sec. 4, Ch. 194, L. 1951; amd. Sec. 1, Ch. 101, L. 1953; amd. Sec. 8, Ch. 158, L. 1959; amd. Sec. 3, Ch. 267, L. 1971; amd. Sec. 45, Ch. 326, L. 1974; 82-109, R.C.M. 1947; (2), (3)En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971; amd. Sec. 50, Ch. 326, L. 1974; Sec. 82-110, R.C.M. 1947; R.C.M. 1947, 82-109(1), 82-110(1), (2); amd. Sec. 1, Ch. 267, L. 1985; amd. Sec. 2, Ch. 787, L. 1991; amd. Sec. 3, Ch. 308, L. 1995; amd. Sec. 1, Ch. 48, L. 1997; amd. Sec. 2, Ch. 569, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 569 in (4) at end of introductory clause inserted "in accordance with the following requirements"; inserted (4)(a) regarding encumbrance of goods and services, grants, and local assistance that are paid for with the general fund; and inserted (4)(b) requiring that nongeneral fund encumbrances have a valid extension plan. Amendment effective July 1, 2001.

Applicability: Section 15, Ch. 569, L. 2001, provided: "[Section 2] [17-1-102] applies to fiscal year 2002 and thereafter."

17-1-103. Assistance to legislature. (1) The department shall make all reports and submit all information and data the legislature requests and, when requested, attend all meetings of the appropriations committee of the house of representatives and of the finance and claims committee of the senate.

(2) The department shall, during the consideration of appropriation measures by the house and senate, devote so much of its time as may be required by the above-named committees, under the direction of the respective chairmen of the committees.

History: En. Sec. 11, Ch. 194, L. 1951; amd. Sec. 35, Ch. 93, L. 1969; amd. Sec. 51, Ch. 326, L. 1974; R.C.M. 1947, 82-111.

Cross-References

The Legislative Finance Act, Title 5, ch. 12.

17-1-104 through 17-1-110 reserved.

17-1-111. General fiscal duties of state treasurer. (1) The state treasurer is the custodian of all money and securities of the state unless otherwise expressly provided by law.

(2) It is the duty of the state treasurer to:

(a) receive and account for all money belonging to the state, not expressly required by law to be received and kept by some other person;

(b) pay warrants out of the funds upon which they are drawn;

(c) upon payment of any warrant, record the receipt of the person to whom it is paid;

(d) keep an account of all money received and disbursed;

(e) at the request of either house of the legislature or of any legislative committee, give information in writing as to the condition of the treasury or on any subject relating to the duties of the office of state treasurer;

(f) superintend the fiscal concerns of the state;

(g) suggest plans for the improvement and management of the public revenue;

(h) keep an account of all warrants drawn upon the treasury and of other appropriation records that the treasurer determines to be essential for the support of the accounting records maintained in the department;

(i) keep a register of warrants, showing the fund upon which each warrant is drawn, each warrant's number, who received the warrant, and the date issued;

(j) require all persons who have received money belonging to the state but who have not accounted for it to settle their accounts;

(k) draw warrants on the state treasury for the payment of money directed by law to be paid out of the treasury, except that a warrant may not be drawn unless authorized by law;

(l) authenticate with the official seal of the state all warrants drawn and all copies of papers issued from the office of state treasurer;

(m) collect and pay into the state treasury all fees received; and

(n) discharge other duties as may be imposed upon the state treasurer by law.

History: En. Sec. 440, Pol. C. 1895; re-en. Sec. 179, Rev. C. 1907; re-en. Sec. 174, R.C.M. 1921; Cal. Pol. C. Sec. 452; re-en. Sec. 174, R.C.M. 1935; amd. Sec. 8, Ch. 147, L. 1963; amd. Sec. 1, Ch. 152, L. 1971; amd. Sec. 1, Ch. 269, L. 1973; R.C.M. 1947, 79-201(1) thru (7); amd. Sec. 1, Ch. 70, L. 1979; amd. Sec. 7, Ch. 325, L. 1995; amd. Sec. 2, Ch. 48, L. 1997.

Cross-References

Strict accountability, Art. VIII, sec. 12, Mont. Const.
Prohibited payments, Art. VIII, sec. 14, Mont. Const.
Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.
Maintenance of fund and account records and interfund loans, 17-2-105.
State money — deposit, 17-6-101.
State money — how expended by Treasurer, 17-8-301.
Payment, registry, and interest, 17-8-304.

17-1-112. Access to offices. The state treasurer shall have full access to all offices of the state for inspection of such books, papers, and accounts thereof as concern his duties.

History: En. Sec. 447, Pol. C. 1895; re-en. Sec. 187, Rev. C. 1907; re-en. Sec. 186, R.C.M. 1921; re-en. Sec. 186, R.C.M. 1935; R.C.M. 1947, 79-805.

Cross-References

Public records management, Title 2, ch. 6, part 2.

17-1-113. Securities lending program. The state treasurer may, subject to the approval of the state board of investments, establish a securities lending program for all securities held in custody under 17-1-111. All loaned securities must be secured by equivalent securities of the same class in an amount equal to at least 100% of the market value of the loaned securities as determined by the board. All fees and proceeds earned by the securities lending program must be deposited pro rata in the funds that loaned the securities.

History: En. Sec. 1, Ch. 272, L. 1981.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.
Board of Investments — allocation — composition — quasi-judicial, 2-15-1808.
State money — deposit, 17-6-101.

17-1-114 through 17-1-120 reserved.

17-1-121. Repealed. Sec. 35, Ch. 325, L. 1995.

History: En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907; re-en. Sec. 151, R.C.M. 1921; Cal. Pol. C. Sec. 433; re-en. Sec. 151, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-101(1) thru (6), (9), (14), (15), (18), (19).

17-1-122. Discretionary authority of state treasurer. The state treasurer may:

(1) inspect the books of any persons charged with the receipt, safekeeping, or disbursement of public money;

(2) require all persons who have received money or who have had the disposition or management of any property of the state of which an account is kept in the department to render statements to the treasurer. A statement must be rendered at times and in the form prescribed by the department.

(3) promulgate rules regarding the distribution and processing of warrants issued; and

(4) establish a system of filing and storage of the original copy of claims paid by state warrant.

History: En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907; re-en. Sec. 151, R.C.M. 1921; Cal. Pol. C. Sec. 433; re-en. Sec. 151, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-101(10), (11), (16), (20); amd. Sec. 8, Ch. 325, L. 1995.

Cross-References

Public records management, Title 2, ch. 6, part 2.
Audits of political subdivisions, Title 2, ch. 7, part 5.

17-1-123. Repealed. Sec. 13, Ch. 48, L. 1997.

History: En. Sec. 426, Pol. C. 1895; re-en. Sec. 176, Rev. C. 1907; re-en. Sec. 156, R.C.M. 1921; re-en. Sec. 156, R.C.M. 1935; R.C.M. 1947, 79-106.

17-1-124. Authority of state auditor concerning securities. The state auditor may require a person who has received securities of which the auditor keeps account to render to the auditor a statement concerning the securities. The statement must be made at the time and in the form prescribed by the auditor.

History: En. Sec. 9, Ch. 325, L. 1995.

Cross-References

Securities regulation, Title 30, ch. 10.

17-1-125 through 17-1-130 reserved.

17-1-131. General duties of budget director. (1) The budget director in addition to the duties set forth in chapter 7 of this title shall perform such other duties as the governor as chief budget officer of the state may direct.

(2) He shall, as often as requested by the governor, prepare and furnish reports to the governor concerning appropriations made by the legislature and the receipts and disbursements made by any department, office, or institution of the state.

(3) The budget director shall be available to all standing committees of the house of representatives and the senate concerned with appropriations, revenue, finance, and claims and shall furnish to such committees any information required while said committees are considering the budget.

History: En. Sec. 6, Ch. 158, L. 1959; amd. Sec. 6, Ch. 282, L. 1974; R.C.M. 1947, 79-1017.

Cross-References

Balanced budget, Art. VIII, sec. 9, Mont. Const.
Powers and duties of Governor, 2-15-201.
The Legislative Finance Act, Title 5, ch. 12.
Governor chief budget officer — appointment of Budget Director, 17-7-103.

17-1-132. Access to information. The budget director shall have power to demand and receive from every department, officer, board, commission, or institution, at any time, any and all information requested.

History: En. Sec. 7, Ch. 158, L. 1959; amd. Sec. 7, Ch. 282, L. 1974; R.C.M. 1947, 79-1018.

Cross-References

Public records management, Title 2, ch. 6, part 2.

Part 2
Anticipation of Revenue

Part Cross-References

Local government — tax and revenue anticipation notes, Title 7, ch. 6, part 11.
Board of Investments — bond anticipation notes, 17-5-1507, 17-5-1606.

17-1-201. Issuance of notes in anticipation of revenue. (1) The board of examiners, upon recommendation of the department of administration, may issue notes in anticipation of the receipt of taxes or revenues, direct or indirect, as the legal demands on the treasury during any fiscal year render it necessary.

(2) The notes issued in any fiscal year shall be for the purposes and within the amounts of appropriations made for the fiscal year and must be designated tax or revenue anticipation notes. Appropriations during any biennium are limited to projected revenue, exclusive of notes issued in anticipation of revenue.

History: En. Sec. 1, Ch. 658, L. 1979.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.
Use of loan proceeds, Art. VIII, sec. 11, Mont. Const.
Prohibited payments, Art. VIII, sec. 14, Mont. Const.
Board of Examiners — allocations, 2-15-1007.

17-1-202. Repealed. Sec. 1, Ch. 2, Sp. L. June 1986.

History: En. Sec. 2, Ch. 658, L. 1979; amd. Sec. 1, Ch. 577, L. 1981.

17-1-203. Interest rate. The notes shall bear interest at such rate as, in the judgment of the board of examiners, may be sufficient or necessary to effect the issuance and sale of the notes in the manner determined by the board of examiners upon recommendation of the department of administration.

History: En. Sec. 3, Ch. 658, L. 1979.

Cross-References

Legal interest, 31-1-106.

17-1-204. Payment — pledge of taxes and revenue — costs of issuance. (1) The notes and interest on the notes must be paid from taxes and revenues not later than the end of the fiscal year in which issued.

(2) The full faith and credit and taxing power of the state is pledged for the payment of all notes issued under this part. In furtherance of this pledge, if there are insufficient funds in the general fund to pay the notes and interest on the notes when due, the department shall transfer available funds from any fund of the state, except pension trust funds, to the general fund to pay the notes and interest. The transfer is considered a loan to the general fund subject to the provisions of 17-2-105.

(3) The department may pay all costs of issuance of notes issued under this part, including without limitation interest, rating agency fees, printing costs, legal fees, bank or trust company

fees, costs to employ persons or firms to assist in the sale of the notes, line of credit fees and charges, and all other amounts related to the costs of issuing the notes. Payment of costs must be made from amounts available from the proceeds of the notes upon deposit in the general fund.

History: En. Sec. 4, Ch. 658, L. 1979; amd. Sec. 2, Ch. 577, L. 1981; amd. Sec. 1, Ch. 49, L. 1985; amd. Sec. 1, Ch. 47, L. 1995.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Parts 3 and 4 reserved

Part 5
Dedication of Revenue to State Special Revenue Fund

17-1-501. Legislative intent. (1) It is the intent of the legislature, by establishing criteria for the review and evaluation of revenue dedication provisions, to ensure that provisions for revenue dedication:

(a) are based on sound principles of revenue dedication as described in 17-1-507;

(b) reflect present circumstances and legislative priorities for state spending;

(c) are terminated when they are no longer necessary or appropriate; and

(d) are subject to the same legislative scrutiny as programs or activities funded from the general fund.

(2) It is the intent of the legislature, by establishing criteria for the review and evaluation of statutory appropriation provisions, to ensure that provisions with statutory appropriations:

(a) reflect present circumstances and legislative priorities for state spending;

(b) are terminated when they are no longer necessary or appropriate; and

(c) are subject to the same legislative scrutiny as other appropriations.

History: En. Sec. 1, Ch. 593, L. 1993; amd. Sec. 14, Ch. 509, L. 1995; amd. Sec. 1, Ch. 8, L. 1999.

17-1-502. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Administrative costs" includes:

(a) personal services;

(b) operating expenses, such as travel, supplies, and communication costs; and

(c) capital expenses, such as equipment, building costs, and real property costs.

(2) (a) "Continuing and reliable source of revenue" means a revenue source for which an agency forecasts an annual level of collections based upon historical data and prepares a budget for expenditures commensurate with the level of collections. Collections may not change significantly on an annual basis.

(b) The term does not include revenue:

(i) that an agency will receive only as a result of an occurrence that is not a routine part of agency operations;

(ii) that will vary significantly on an annual basis; or

(iii) that is unable to be included in the agency budget because of the erratic nature of receipt.

(3) "Dedicated revenue provision" means an administrative or legislative action that allocates the revenue from a tax, fee, assessment, or other source to an account in the state special revenue fund as described in 17-2-102.

(4) "General revenue source" means a source of revenue not governed by established or implied restrictions based on the source or limited use of the revenue. The term includes taxes, interest earnings, investment earnings, fines, and forfeitures.

(5) "State special revenue fund" means a fund in the state treasury consisting of money from state sources that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government, as provided in 17-2-102.

History: En. Sec. 2, Ch. 593, L. 1993; amd. Sec. 15, Ch. 509, L. 1995.

Cross-References

Fund structure, 17-2-102.

17-1-503. Transfer of fund balances to general fund. The balance remaining in each special revenue account terminated pursuant to legislative review must be deposited in the general fund.

History: En. Sec. 3, Ch. 593, L. 1993; amd. Sec. 31, Ch. 18, L. 1995; amd. Sec. 16, Ch. 509, L. 1995; amd. Sec. 2, Ch. 8, L. 1999.

17-1-504. Effect of termination. (1) If the legislature has appropriated revenue from sources de-earmarked by the legislature, the appropriation is considered to have been made from the general fund.

(2) All assets, liabilities, and fund balances of accounts terminated by the legislature accrue to the general fund.

History: En. Sec. 4, Ch. 593, L. 1993; amd. Sec. 1, Ch. 252, L. 1995; amd. Sec. 17, Ch. 509, L. 1995.

Cross-References

Disposition of money from certain designated license and other taxes, 15-1-501.

Definition of and revenue for state equalization aid, 20-9-343.

17-1-505. Review of dedicated revenue provisions. (1) The legislature recognizes that dedicated revenue provisions are subject to review by:

(a) the office of budget and program planning in the development and implementation of the executive budget and analysis of legislation;

(b) the legislative fiscal division in analyzing the executive budget;

(c) the legislative services division in drafting legislation;

(d) the legislative auditor in auditing agencies; and

(e) the department of administration in performing the functions provided for in 17-2-106 and 17-2-111.

(2) To avoid unnecessary use of dedicated revenue provisions, the entities listed in subsection (1) shall, in the course of current duties, consider the principles in 17-1-507 and the criteria listed in this subsection for each new or existing dedicated revenue provision. A dedicated revenue provision should not give a program or activity an unfair advantage for funding. The expenditures from a dedicated revenue provision must be based on requirements for meeting a legislatively established outcome. Statutorily mandated programs or activities funded through dedicated revenue provisions from general revenue sources must be reviewed to the same extent as programs or activities funded from the general fund. The use of a dedicated revenue provision may be justified if it satisfies one or more of the following:

(a) The program or activity funded provides direct benefits for those who pay the dedicated tax, fee, or assessment, and the tax, fee, or assessment is commensurate with the costs of the program or activity.

(b) The use of the dedicated revenue provision provides special information or other advantages that could not be obtained if the revenue were allocated to the general fund.

(c) The dedicated revenue provision provides program funding at a level equivalent to the expenditures established by the legislature.

(d) The dedicated revenue provision involves collection and allocation formulas that are appropriate to the present circumstances and current priorities in state government.

(e) The dedicated revenue provision does not impair the legislature's ability to scrutinize budgets, control expenditures, and establish priorities for state spending.

(f) The dedicated revenue provision results in an appropriate projected ending fund balance.

(g) The dedicated revenue provision fulfills a continuing, legislatively recognized need.

(h) The dedicated revenue provision does not result in accounting or auditing inefficiency.

History: En. Sec. 5, Ch. 593, L. 1993; amd. Sec. 18, Ch. 509, L. 1995; amd. Sec. 3, Ch. 8, L. 1999; amd. Sec. 43, Ch. 51, L. 1999; amd. Sec. 1, Ch. 554, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 554 deleted former (1) requiring the legislative finance committee to, each interim, review dedicated revenue provisions to ensure that legislative policy is clearly stated; deleted former (4) requiring the committee to establish procedures to facilitate a biennial review of dedicated revenue provisions; deleted former (5) requiring the committee to summarize its review findings and report them to the legislature, including recommendations for termination or extension of dedicated revenue provisions; and made minor changes in style. Amendment effective July 1, 2001.

17-1-506. Review of legislation. The office of budget and program planning shall, consistent with the review provisions in 17-1-505, review each piece of legislation that proposes to dedicate revenue. The office shall submit its findings concerning the dedication of revenue on the fiscal notes accompanying that legislation.

History: En. Sec. 6, Ch. 593, L. 1993.

17-1-507. Principles of revenue dedication. (1) It is the policy of the legislature that a revenue source not be dedicated for a specific purpose unless one or more of the following conditions are met:

(a) The person or entity paying the tax, fee, or assessment is the direct beneficiary of the specific activity that is funded by the tax, fee, or assessment; the entire cost of the activity is paid by the beneficiary; and the tax, fee, or assessment paid is commensurate with the cost of the activity, including reasonable administrative costs.

(b) There is an expectation that funds donated by a person or entity will be used for a specified purpose. Grants from private or public entities are considered donations under this subsection.

(c) There is a legal basis for the revenue dedication. A legal basis is a constitutional mandate, federal mandate, or statutory requirement in which a source of funds is designated for a specific purpose.

(d) There is a recognized need for accountability through a separation of funding from the general fund consistent with generally accepted accounting principles.

(2) The total funding for a program is a legislative budget and policy issue for which a dedicated revenue provision may not be justified if:

(a) a general fund appropriation is needed to supplement the dedicated revenue support for the program or activity; or

(b) dedicating a revenue source or portion of a revenue source diverts funds that could be considered a general revenue source.

(3) In the consideration of the general appropriations act for each biennium, the legislature shall determine the appropriateness of dedicating revenue to a program or activity under conditions described in subsection (2). The office of budget and program planning shall describe the occurrence in its presentation of the executive budget, and the legislative fiscal analyst shall highlight the issue in the budget analysis and for the appropriations subcommittee considering the revenue dedication.

History: En. Sec. 19, Ch. 509, L. 1995.

17-1-508. Review of statutory appropriations. (1) Each biennium, the office of budget and program planning shall, in development of the executive budget, review and identify instances in which statutory appropriations in current law do not appear consistent with the guidelines set forth in subsection (2).

(2) The review of statutory appropriations must determine whether a statutory appropriation meets the requirements of 17-7-502. A statutory appropriation from a continuing and reliable source of revenue may not be used to fund administrative costs. In reviewing and establishing statutory appropriations, the legislature shall consider the following guidelines. A statutory appropriation may be considered appropriate if:

(a) the fund or use requires an appropriation;

(b) the money is not from a continuing, reliable, and estimable source;

(c) the use of the appropriation or the expenditure occurrence is not predictable and reliable;

(d) the authority does not exist elsewhere;

(e) an alternative appropriation method is not available, practical, or effective;

(f) other than for emergency purposes, it does not appropriate money from the state general fund;

(g) the money is dedicated for a specific use;

(h) the legislature wishes the activity to be funded on a continual basis; and

(i) when feasible, an expenditure cap and sunset date are included.

(3) The office of budget and program planning shall prepare a fiscal note for each piece of legislation that proposes to create or amend a statutory appropriation. It shall, consistent with the guidelines in this section, review each of these pieces of legislation. Its findings concerning the statutory appropriation must be contained in the fiscal note accompanying that legislation.

History: En. Sec. 20, Ch. 509, L. 1995; amd. Sec. 19, Ch. 422, L. 1997; amd. Sec. 4, Ch. 8, L. 1999; amd. Sec. 44, Ch. 51, L. 1999; amd. Sec. 2, Ch. 554, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 554 deleted former (1) requiring the legislative finance committee to, each interim, review statutory appropriations listed in 17-7-502 to eliminate those no longer needed and to ensure that legislative policy is clearly stated; in (1) before "identify" inserted "review and"; deleted former (5) requiring the committee to establish procedures to facilitate a biennial review of statutory appropriations and requiring the committee to summarize its review findings and report them to the legislature, including recommendations for termination or extension of statutory appropriations; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Statutory appropriations, Title 17, ch. 7, part 5.

17-1-509 reserved.

17-1-510. State indirect cost recovery plan. (1) The department shall annually prepare a state indirect cost recovery plan. The state indirect cost recovery plan must provide that the general government program costs that are indirectly incurred by agencies and that are funded by the general fund be allocated among the agencies served by those programs.

(2) Agencies required to pay costs under the state indirect cost recovery plan shall make payments in four equal installments, due no later than October 1, January 1, March 1, and June 1 of each fiscal year, by depositing the payments into the general fund.

History: En. Sec. 3, Ch. 37, Sp. L. November 1993.

Part 6
Dedication of Revenue to Local Governments

Part Compiler's Comments

Effective Date: Section 5, Ch. 400, L. 2001, provided that this part is effective on passage and approval. Approved April 28, 2001.

Retroactive Applicability: Section 6, Ch. 400, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to state revenue dedications after December 31, 2000."

17-1-601. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Dedicated revenue provision" means an administrative or legislative action that allocates the revenue from a tax, fee, assessment, or other source to a local government.

(2) "General revenue source" means a source of revenue not governed by established or implied restrictions based on the source or limited use of the revenue. The term includes taxes, interest earnings, investment earnings, fines, and forfeitures.

History: En. Sec. 1, Ch. 400, L. 2001.

17-1-602. Revenue dedication guidelines. (1) It is the policy of the legislature that a revenue source may be dedicated for a specific purpose when one or more of the following conditions are met:

(a) The person or entity paying the tax, fee, or assessment is the direct beneficiary of the specific activity that is funded by the tax, fee, or assessment, and the tax, fee, or assessment is commensurate with the costs of the program or activity.

(b) The entire cost of the activity is paid by the beneficiary, and the tax, fee, or assessment is commensurate with the costs of the activity, including reasonable administrative costs.

(c) There is an expectation that funds donated by a person or entity will be used for a specified purpose. Grants from private or public entities are considered donations under this subsection.

(d) There is a legal basis for the revenue dedication. A legal basis is a constitutional mandate, federal mandate, or statutory requirement in which a source of funds is designated for a specific purpose.

(e) There is a recognized need for accountability through a separation of funding from the general fund consistent with generally accepted accounting principles.

(2) In the consideration of the general appropriations act for each biennium, the legislature shall determine the appropriateness of dedicating revenue. The office of budget and program planning shall describe the occurrence in its presentation of the executive budget, and the legislative fiscal analyst shall highlight the issue in the budget analysis and for the appropriations subcommittee considering the revenue dedication.

History: En. Sec. 2, Ch. 400, L. 2001.

17-1-603. Review of dedicated revenue provisions. (1) Each interim, the legislative finance committee shall review dedicated revenue provisions based upon procedures established under subsection (4) and the revenue dedication guidelines set forth in 17-1-602.

(2) The legislature recognizes that dedicated revenue provisions are also subject to review by:

(a) the office of budget and program planning in the development and implementation of the executive budget and analysis of legislation;

(b) the legislative fiscal division in analyzing the executive budget;

(c) the legislative services division in drafting legislation; and

(d) the legislative audit division in auditing agencies.

(3) To avoid unnecessary use of dedicated revenue provisions, the entities listed in subsection (2) shall, in the course of current duties, consider the guidelines listed in 17-1-602 and any criteria provided in the legislation dedicating the revenue and listed in this subsection. The expenditures from a dedicated revenue provision must be based on requirements for meeting a legislatively established outcome. Statutorily mandated programs or activities funded through dedicated revenue provisions from general revenue sources must be reviewed to the same extent as programs or activities funded from the general fund. The use of a dedicated revenue provision may be justified if it satisfies one or more of the following:

(a) The program or activity funded provides direct benefits for those who pay the dedicated tax, fee, or assessment, and the tax, fee, or assessment is commensurate with the costs of the program or activity.

(b) The use of the dedicated revenue provision provides special information or other advantages that could not be obtained without the revenue dedication.

(c) The dedicated revenue provision involves collection and allocation formulas that are appropriate to the present circumstances and current priorities of state and local government.

(d) The dedicated revenue provision does not impair the legislature's ability to scrutinize budgets, control expenditures, and establish priorities for state spending.

(e) The dedicated revenue provision results in an appropriate projected ending fund balance.

(f) The dedicated revenue provision fulfills a continuing need recognized by both local government and the legislature.

(g) The dedicated revenue provision does not result in accounting or auditing inefficiency.

(4) The legislative finance committee shall establish procedures to facilitate a biennial review and evaluation of dedicated revenue provisions.

(5) Upon completion of the review, the committee shall report a summary of its findings to the legislature, including its recommendation of termination or extension, with or without modification, of the dedicated revenue provision.

History: En. Sec. 3, Ch. 400, L. 2001.

CHAPTER 2

ACCOUNTING

Part 1 — Treasury Funds and Accounts

17-2-101. Title and purpose.
17-2-102. Fund structure.
17-2-103. Previous definitions of funds — identification or segregation of money and funds.

17-2-104. Additional accounts authorized.
17-2-105. Maintenance of fund and account records and interfund loans.
17-2-106. Creation and abolition of new accounts.
17-2-107. Accurate accounting records and interentity loans.
17-2-108. Expenditure of nongeneral fund money first.
17-2-109. Department access to records.
17-2-110. Fiscal year and financial reports.
17-2-111. State special revenue accounts — report.
17-2-112 through 17-2-120 reserved.
17-2-121. Deposits by insurance commissioner.
17-2-122. Repealed.
17-2-123. Repealed.
17-2-124 through 17-2-130 reserved.
17-2-131. Genetic engineering technology research and development account created.

Part 2 — Special Accounts

17-2-201. Contingent revolving accounts — when established.
17-2-202. Retention of agency moneys.
17-2-203. Repealed.

Part 3 — State and Local Charges for Services — Limit on Fund Balance

17-2-301. Definitions.
17-2-302. Limitation on balance in state or local charge for services fund — exceptions — audits.
17-2-303. Reduction of charge required.
17-2-304. Reports required.

Part 4 — Full Cost Accounting Act

17-2-401. Short title.
17-2-402. Legislative findings and declarations.
17-2-403. Policy and purpose.
17-2-404. Definitions.
17-2-405. Full cost accounting pilot program — duties of divisions, bureaus, units, and programs — cost factors — reporting requirements.

Chapter Cross-References

Contribution account in agency fund, Title 19, ch. 1, part 6.
Fund for telecommunications services for the handicapped, 53-19-310.
Funds created for water conservation, 85-1-321.

Part 1
Treasury Funds and Accounts

Part Cross-References

Officers not to pay illegal warrant, 2-2-206.
Disposition of fines, penalties, forfeitures, and fees, 3-10-601.
Disposition of license and other tax proceeds within treasury funds, 15-1-501.
Warrants to Fire Department Relief Association, 19-18-514.
Ex officio treasurer of unemployment compensation account, 39-51-402.
Treasurer for hail insurance, 80-2-232.

17-2-101. Title and purpose. (1) Sections 17-2-101 through 17-2-107 may be cited as the "Treasury Fund Structure Act".

(2) The purpose of these sections is to:

(a) comply with Article VIII, section 12, of the Montana constitution;

(b) simplify the accounting system and treasury fund structure of the state;

(c) make possible the full utilization of modern accounting methods;

(d) provide the legislature with a greater measure of control over public money; and

(e) enable the financial records of the state to accurately reflect the state's revenue, expenditures, expenses, and financial position in accordance with generally accepted accounting principles.

History: En. Sec. 1, Ch. 147, L. 1963; R.C.M. 1947, 79-409; amd. Sec. 1, Ch. 540, L. 1979; amd. Sec. 1, Ch. 28, L. 1981; amd. Sec. 6, Ch. 532, L. 1997.

17-2-102. Fund structure. For the purpose of ensuring strict accountability for all revenue received and spent, there are in the state treasury only the following fund categories and types:

(1) the governmental fund category, which includes:

(a) the general fund, which accounts for all financial resources except those required to be accounted for in another fund;

(b) the special revenue fund type, which accounts for the proceeds of specific revenue sources (other than private purpose trusts or major capital projects) that are legally restricted to expenditure for specified purposes. The financial activities of the special revenue fund type are subdivided, for operational purposes, into the following funds to serve the purpose indicated:

(i) The state special revenue fund consists of money and other proceeds from state and other nonfederal sources deposited in the state treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government and money and other proceeds from other nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation.

(ii) The federal special revenue fund consists of money deposited in the treasury from federal sources, including trust income, that is used for the operation of state government.

(c) the capital projects fund type, which accounts for financial resources to be used for the acquisition or construction of major capital facilities, other than those financed by proprietary funds or trust funds;

(d) the debt service fund type, which accounts for the accumulation of resources for and the payment of general long-term debt principal and interest; and

(e) the permanent fund type, which accounts for financial resources that are legally restricted to the extent that only earnings, but not principal, may be used;

(2) the proprietary fund category, which includes:

(a) the enterprise fund type, which accounts for operations:

(i) that are financed and operated in a manner similar to private business enterprises whenever the intent of the legislature is that costs (i.e., expenses, including depreciation) of providing goods or services to the general public on a continuing basis are to be financed or recovered primarily through user charges; or

(ii) whenever the legislature has decided that periodic determination of revenue earned, expenses incurred, or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes; and

(b) the internal service fund type, which accounts for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursed basis;

(3) the fiduciary fund category, which includes trust and agency fund types used to account for assets held by state government in a trustee capacity or as an agent for individuals, private organizations, other governmental entities, or other funds. These include the:

(a) private purpose trust fund type;

(b) investment trust fund type;

(c) pension and other employee benefit trust fund type; and

(d) agency fund type.

(4) the higher education funds, which include:

(a) the current fund, which accounts for money deposited in the state treasury that is used to pay current operating costs relating to instruction, research, public service, and allied support operations and programs conducted within the Montana university system. The financial activities of the current fund are subdivided, for operational purposes, into the four following subfunds to serve the purpose indicated:

(i) The unrestricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations and is free of externally imposed restrictions, except those imposed by the legislature.

(ii) The restricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations but only for purposes imposed by sources external to the board of regents and the legislature.

(iii) The designated subfund segregates that portion of the current fund's financial resources that is associated with general operations but is separately classified in order to accumulate costs that are to be recharged as allocated to other funds or subfunds, identifies financial activities related to special organized activities of educational departments in which the activity is fully supported by supplemental assessments, and identifies special supply and facility fees that are approved for collections beyond normal course fees and their disposition.

(iv) The auxiliary subfund segregates that portion of the current fund's financial resources that is devoted to providing essential on-campus services primarily to students, faculty, or staff in which a fee that is directly related to but does not necessarily equal the cost of the service provided is charged to the consumer.

(b) the student loan fund, which accounts for money deposited in the state treasury that may be loaned to students, faculty, or staff for purposes related to education, organized research, or public services by the Montana university system;

(c) the endowment fund, which accounts for money deposited in the state treasury by the Montana university system in which the principal portion of the amount received is nonexpendable but is available for investment. Expendable earnings on endowment funds are to be transferred to appropriate operating funds pursuant to prevailing administrative requirements.

(d) the annuity and life income fund, which accounts for money deposited in the state treasury by the Montana university system under an agreement by which the money is made available on the condition that the receiving unit of the Montana university system binds itself to pay stipulated amounts periodically to the donor or others designated by the donor over a specified period of time;

(e) the plant fund, which accounts for those financial resources allocated to or received by the Montana university system for capital outlay purposes or to retire long-term debts associated with construction or acquisition of fixed assets and the net accumulative results of these activities; and

(f) the agency fund, which accounts for money deposited in the state treasury for which the Montana university system acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff, and qualified organizations.

History: En. Sec. 2, Ch. 147, L. 1963; amd. Sec. 1, Ch. 321, L. 1973; amd. Sec. 1, Ch. 438, L. 1977; R.C.M. 1947, 79-410; amd. Sec. 2, Ch. 540, L. 1979; amd. Sec. 2, Ch. 28, L. 1981; amd. Sec. 9, Ch. 281, L. 1983; amd. Sec. 1, Ch. 136, L. 1985; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 1, Ch. 700, L. 1989; amd. Sec. 2, Ch. 433, L. 1993; amd. Sec. 4, Ch. 308, L. 1995; amd. Sec. 7, Ch. 532, L. 1997; amd. Sec. 1, Ch. 291, L. 1999; amd. Sec. 6, Ch. 34, L. 2001; amd. Sec. 2, Ch. 305, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 34 in (1)(b) near beginning after "other than" substituted "private purpose trusts" for "expendable trusts"; inserted (1)(e) regarding the permanent fund type; in (3)(a) substituted "private purpose" for "expendable"; deleted former (1)(c)(ii) that read: "(ii) nonexpendable trust fund type"; in (3)(c) after "pension" inserted "and other employee benefit"; in (4)(c) at end of first sentence after "investment" deleted "thus producing consumable income"; deleted former (2) that read: "(2) In addition to the funds provided for in subsection (1), there are in the state treasury the following account groups:

(a) the fixed assets account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's general fixed assets, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v); and

(b) the long-term debt account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's unmatured general long-term liabilities, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v)"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 305 in (1)(b)(i) near beginning and near middle after "money" inserted "and other proceeds". Amendment effective April 21, 2001.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Insurance on state buildings — use of proceeds — building replacement, 2-17-105.

Disposition of tax proceeds, Title 15, ch. 1, part 5.

Alcohol revenue to be paid to State Treasurer, 16-1-306.

Fiscal officer for receipt of federal grants, 17-3-106.

Bond issues, Title 17, ch. 5.
Statutory appropriations, Title 17, ch. 7, part 5.
Appropriation and disbursement of money from treasury, 17-8-101.
Special law enforcement assistance account in federal special revenue fund, 44-13-101.
Environmental contingency account, 75-1-1101.
Oil and gas production damage mitigation account, 82-11-161.
Energy conservation program bonds — deposit of proceeds, 90-4-611, 90-4-612.
Use of energy conservation program account, 90-4-613.
Coal impacts — general provisions, Title 90, ch. 6, part 2.

17-2-103. Previous definitions of funds — identification or segregation of money and funds. (1) It is the intent of the legislature that the definitions in 17-2-102 supersede all previous definitions of public funds that are inconsistent with the definitions found in this part.

(2) Any laws enacted or any contracts entered into in pursuance of law that require the segregation of money in the state treasury by means of a separate treasury fund must be interpreted as permitting the segregation of the money by means of a subfund or account within one of the funds created by 17-2-102.

(3) Each federal grant or other federal money within any subfund or account of one of the funds created by 17-2-102(1) through (3) must be identifiable as a separate accounting entity, reporting center, responsibility center, or revenue identification code, and an account must be made of each grant or other money by income and expenditure for each federal grant year or fiscal year as may be applicable.

(4) Unless otherwise specifically provided in the statutes pertaining to the tax, the portion of taxes collected by the state that, pursuant to a statute, are to be allocated or distributed to units of local government, school districts, authorities, or other local governmental entities must be accounted for in a state special revenue fund, established in 17-2-102, as prescribed by the department in accordance with generally accepted accounting principles.

History: Ap.p. Sec. 3, Ch. 147, L. 1963; amd. Sec. 2, Ch. 438, L. 1977; Sec. 79-411, R.C.M. 1947; Ap.p. Sec. 2, Ch. 438, L. 1977; R.C.M. 1947, 79-411; amd. Sec. 3, Ch. 28, L. 1981; amd. Sec. 1, Ch. 515, L. 1985; amd. Sec. 2, Ch. 556, L. 1995; amd. Sec. 8, Ch. 532, L. 1997; amd. Sec. 7, Ch. 34, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 34 in (2) near beginning after "enacted" deleted "in the future" and after "entered into" deleted "in the future"; in (3) after "created by" substituted "17-2-102(1) through (3)" for "17-2-102(1)(a) through (1)(c)"; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Deposit and use of proceeds, 17-5-506.

17-2-104. Additional accounts authorized. The enumeration of treasury funds in 17-2-102 does not prohibit the state treasurer from establishing and maintaining:

(1) clearance or suspense accounts for the purpose of paying refunds, for the purpose of grouping payments from different funds or accounts prior to disbursement, or for the purpose of conveniently processing receipts before crediting the proper fund;

(2) investment funds authorized under the "Unified Investment Plan".

History: En. Sec. 4, Ch. 147, L. 1963; R.C.M. 1947, 79-412.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.
Investments, Title 17, ch. 6, part 2.

17-2-105. Maintenance of fund and account records and interfund loans. (1) The state treasurer shall record receipts and disbursements for treasury funds and shall maintain fund records in a manner that reflects the total cash and invested balance of each fund. The state treasurer shall also maintain records of individual funds within the debt service, agency, capital projects, and trust fund types in a manner that reflects the total cash and invested balance of each fund. When necessary to meet federal or other requirements that money be segregated in the treasury, the state treasurer may establish accounts, funds, or subfunds within any fund type listed in 17-2-102.

(2) (a) For the purpose of supplying deficiencies in the general fund, the state treasurer may temporarily borrow from other treasury funds, excluding pension trust funds, providing that the loan is recorded in the state accounting records. Except as provided in subsection

(2)(b), the loan does not bear interest. A fund may not be so impaired that all proper demands on the fund cannot be met.

(b) If a loan to the general fund is made from a fund that retains its own interest, the department shall repay the loan with interest at a rate established by the state treasurer based on the estimated interest rate the funds would have earned if the funds had not been borrowed.

History: (1)En. Sec. 6, Ch. 147, L. 1963; amd. Sec. 1, Ch. 268, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-414, R.C.M. 1947; (2)En. Sec. 7, Ch. 147, L. 1963; amd. Sec. 2, Ch. 268, L. 1971; amd. Sec. 2, Ch. 321, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-415, R.C.M. 1947; R.C.M. 1947, 79-414(1), 79-415(4); amd. Sec. 10, Ch. 281, L. 1983; amd. Sec. 2, Ch. 47, L. 1995; amd. Sec. 1, Ch. 11, L. 1999.

17-2-106. Creation and abolition of new accounts. (1) Moneys deposited in each fund except the general fund shall be segregated by the department of administration by specific accounts based on source, function, or department. When moneys deposited in the state treasury cannot logically be credited to an existing account or when it is impractical or undesirable for an agency of state government to segregate moneys in its own accounts, the department of administration, in its discretion, may create new accounts consistent with the definitions in 17-2-102. However, the department of administration shall create as few new accounts as practicable.

(2) The department of administration shall periodically examine all accounts and shall abolish or consolidate inactive or unnecessary accounts.

(3) When moneys have been appropriated from several sources for the operation of a state agency, the department of administration may establish an account to receive, hold, and disburse moneys appropriated for the operation of the agency and regulate the transfer of moneys to the account in accordance with the laws governing the expenditure of state moneys.

History: (1), (2)En. Sec. 5, Ch. 147, L. 1963; amd. Sec. 27, Ch. 326, L. 1974; Sec. 79-413, R.C.M. 1947; (3)En. Sec. 6, Ch. 147, L. 1963; amd. Sec. 1, Ch. 268, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-414, R.C.M. 1947; R.C.M. 1947, 79-413, 79-414(4).

17-2-107. Accurate accounting records and interentity loans. (1) The department shall record receipts and disbursements for treasury funds and for accounting entities within treasury funds and shall maintain records in a manner that reflects the total cash and invested balance of each fund and each accounting entity. The department shall adopt the necessary procedures to ensure that interdepartmental or intradepartmental transfers of money or loans do not result in inflation of figures reflecting total governmental costs and revenue.

(2) (a) Subject to 17-2-105, when the expenditure of an appropriation from a fund designated in 17-2-102(1) through (3) is necessary and the cash balance in the accounting entity from which the appropriation was made is insufficient, the department may authorize a temporary loan, bearing no interest, of unrestricted money from other accounting entities if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. An accounting entity receiving a loan or an accounting entity from which a loan is made may not be so impaired that all proper demands on the accounting entity cannot be met even if the loan is extended.

(b) (i) When an expenditure from a fund or subfund designated in 17-2-102(4) is necessary and the cash balance in the fund or subfund from which the expenditure is to be made is insufficient, the commissioner of higher education may authorize a temporary loan, bearing interest as provided in subsection (4) of this section, of money from the agency's other funds or subfunds if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. A fund or subfund receiving a loan or from which a loan is made may not be so impaired that all proper demands on the fund or subfund cannot be met even if the loan is extended.

(ii) One accounting entity within each fund or subfund designated in 17-2-102(4) must be established for the sole purpose of recording loans between the funds or subfunds. This accounting entity is the only accounting entity within each fund or subfund that may receive a loan or from which a loan may be made.

(c) A loan made under subsection (2)(a) or (2)(b) must be repaid within 1 calendar year of the date on which the loan is approved unless it is extended under subsection (3) or by specific legislative authorization.

(3) Under unusual circumstances, the director of the department or the board of regents may grant one extension for up to 1 year for a loan made under subsection (2)(a) or (2)(b). The director or board shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the current unrestricted subfund to funds designated in 17-2-102(4)(a)(iv) and (4)(b) through (4)(f) must bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

(5) If for 2 consecutive fiscal yearends a loan or an extension of a loan has been authorized to the same accounting entity as provided in subsection (2) or (3), the department or the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the second loan or extension was made, an analysis of the solvency of the accounting entity or accounting entities within the university fund or subfund, and a plan for repaying the loans.

(6) If for 2 consecutive fiscal yearends an accounting entity in a fund or subfund designated in 17-2-102(4) has a negative cash balance, the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the accounting entity has a negative cash balance, an analysis of the solvency of the accounting entity, and a plan to address any problems concerning the accounting entity's negative cash balance or solvency.

(7) (a) An accounting entity in a fund designated in 17-2-102(1) through (3) may not have a negative cash balance at fiscal yearend. The department may, however, allow a fund type within each agency to carry a negative balance at any point during the fiscal year if the negative cash balance does not exist for more than 7 working days.

(b) (i) Except as provided in subsection (7)(b)(ii) of this section, a unit of the university system shall maintain a positive cash balance in the funds and subfunds designated in 17-2-102(4).

(ii) If a fund or subfund inadvertently has a negative cash balance, the department may allow the fund or subfund to carry the negative cash balance for no more than 7 working days. If the negative cash balance exists for more than 7 working days, a transaction may not be processed through the statewide accounting system for that fund or subfund.

(8) Notwithstanding the provisions of subsections (2) through (4), the department may authorize loans to accounting entities in the federal and state special revenue funds with long-term repayment whenever necessary because of the timing of the receipt of agreed-upon reimbursements from federal, private, or other governmental entity sources for disbursements made. If possible, the loans must be made from funds other than the general fund. The department may approve the loans if the requesting agency can demonstrate that the total loan balance does not exceed total receivables from federal, private, or other governmental entity sources and receivables have been billed on a timely basis. The loan must be repaid under terms and conditions that may be determined by the department or by specific legislative authorization.

History: En. Sec. 6, Ch. 147, L. 1963; amd. Sec. 1, Ch. 268, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-414(2), (3); amd. Sec. 1, Ch. 626, L. 1979; amd. Sec. 4, Ch. 28, L. 1981; amd. Sec. 1, Ch. 517, L. 1983; amd. Sec. 2, Ch. 136, L. 1985; amd. Sec. 1, Ch. 354, L. 1985; amd. Sec. 1, Ch. 1, Sp. L. June 1986; amd. Sec. 1, Ch. 170, L. 1987; amd. Sec. 2, Ch. 341, L. 1987; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 1, Ch. 151, L. 1989; amd. Sec. 1, Ch. 622, L. 1989; amd. Sec. 1, Ch. 628, L. 1991; amd. Sec. 5, Ch. 308, L. 1995; amd. Sec. 93, Ch. 42, L. 1997; amd. Sec. 1, Ch. 547, L. 1997; amd. Sec. 2, Ch. 11, L. 1999; amd. Sec. 2, Ch. 291, L. 1999; amd. Sec. 8, Ch. 34, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 34 in (2)(a) near beginning after "designated in" substituted "17-2-102(1) through (3)" for "17-2-102(1)(a) through (1)(c)"; in (2)(b)(i) and (2)(b)(ii) near beginning after "designated in" substituted "17-2-102(4)" for "17-2-102(1)(d)"; in (4) near beginning after "designated in" substituted "17-2-102(4)(a)(iv) and (4)(b) through (4)(f)" for "17-2-102(1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi)"; in (6) near beginning after "designated in" substituted "71-2-102(4)" for "17-2-102(1)(d)"; in (7)(a) near beginning after "designated in" substituted "17-2-102(1) through (3)" for "17-2-102(1)(a) through (1)(c)"; in (7)(b)(i) at end substituted "17-2-102(4) for "17-2-102(1)(d)"; and made minor changes in style. Amendment effective July 1, 2001.

17-2-108. Expenditure of nongeneral fund money first. (1) Except for the exemptions applicable to the Montana historical society in 22-3-114(5) and the Montana state library in 22-1-226(5), an office or entity of the executive, legislative, or judicial branch of state government shall apply expenditures against appropriated nongeneral fund money whenever possible before using general fund appropriations.

(2) The approving authority, as defined in 17-7-102, shall authorize the decrease of the general fund appropriation of an agency by the amount of money received from federal sources in excess of the appropriation in an appropriation act unless the decrease is contrary to federal law, federal rule, or a contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If directed by an appropriation act, the approving authority shall decrease the general fund appropriation of an agency by the amount of money received from nonfederal sources in excess of the appropriation unless the decrease is contrary to state law, state rule, or a contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If the general fund appropriation of an agency is decreased pursuant to this section, the appropriation for the fund in which the money is received is increased in the amount of the general fund decrease.

History: En. Sec. 4, Ch. 194, L. 1951; amd. Sec. 1, Ch. 101, L. 1953; amd. Sec. 8, Ch. 158, L. 1959; amd. Sec. 3, Ch. 267, L. 1971; amd. Sec. 45, Ch. 326, L. 1974; R.C.M. 1947, 82-109(2); amd. Sec. 1, Ch. 352, L. 1989; amd. Sec. 3, Ch. 787, L. 1991; amd. Sec. 4, Ch. 4, L. 1993; amd. Sec. 3, Ch. 339, L. 1995.

17-2-109. Department access to records. (1) All officers, employees, and other persons connected with the fiscal affairs of any state office, agency, or institution must afford all reasonable facilities for the examination of accounts and investigations provided for and must make reports, returns, and exhibits relating to such fiscal matters to the department in a form that the department shall prescribe.

(2) If an officer or employee of the state or any agency refuses or neglects to comply with subsection (1) of this section, the salary of that officer or employee shall, on request of the department to the proper official, be withheld until that officer or employee complies with subsection (1) and the department certifies approval to the disbursing officer.

History: En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971; amd. Sec. 50, Ch. 326, L. 1974; R.C.M. 1947, 82-110(part).

Cross-References

Public records — Secretary of State's powers and duties, 2-6-203.

17-2-110. Fiscal year and financial reports. (1) The fiscal year for state purposes commences on July 1 of each year and ends on June 30 of each year.

(2) At the end of each fiscal year, the fiscal records of each state office, department, bureau, commission, institution, university unit, and agency (collectively referred to as "state agency") must be closed. Each state agency shall prepare the financial records and reconciliations for the fiscal year as the department of administration may prescribe. The financial reports of the uniform accounting and reporting system prescribed in 17-1-102(2) are to be completed and distributed not more than 31 days following the end of each fiscal year. The department of administration may extend this time limit if a state agency can show necessity for the extension.

(3) The reports are to be distributed to the department of administration and the legislative auditor and any other state agency that the department of administration may prescribe. It is the intent of this provision that these reports accurately and comprehensively present the financial activities of the reporting state agency in accordance with generally accepted accounting principles so that the reports can be effectively used by the executive and legislative branches of state government.

(4) Upon consolidation of the reports, the annual financial report by the department of administration must be available for other individuals and organizations interested in the financial affairs of the state of Montana.

History: En. Sec. 3821, Pol. C. 1895; re-en. Sec. 2594, Rev. C. 1907; amd. Sec. 1, Ch. 73, L. 1921; re-en. Sec. 518, R.C.M. 1921; re-en. Sec. 518, R.C.M., 1935; amd. Sec. 1, Ch. 121, L. 1953; amd. Sec. 1, Ch. 84, L. 1955; amd. Sec. 2, Ch. 127, L. 1961; amd. Sec. 1, Ch. 175, L. 1969; R.C.M. 1947, 59-701(part); amd. Sec. 2, Ch. 267, L. 1985; amd. Sec. 6, Ch. 308, L. 1995; amd. Sec. 3, Ch. 48, L. 1997.

Cross-References

Statutes — effective date, 1-2-201.
Legislative Auditor's powers and duties, 5-13-304.
Audit information from state agencies, 5-13-309.

17-2-111. State special revenue accounts — report. Each biennium, the department shall provide information on all state special revenue accounts as requested by the legislative finance committee. The department shall provide the information to the legislative finance committee not later than February 1 of the year preceding a regular session of the legislature.

History: En. Sec. 1, Ch. 390, L. 1987; amd. Sec. 2, Ch. 700, L. 1989; amd. Sec. 21, Ch. 509, L. 1995; amd. Sec. 5, Ch. 8, L. 1999.

17-2-112 through 17-2-120 reserved.

17-2-121. Deposits by insurance commissioner. Except as provided in 33-2-708, all fees, miscellaneous and examination charges, fines, penalties, and those amounts received pursuant to 33-2-311, 33-2-705, or 50-3-109 collected by the insurance commissioner pursuant to Title 33 and the rules adopted to implement Title 33 must be deposited in the general fund.

History: En. Sec. 2, Ch. 391, L. 1985; amd. Sec. 2, Ch. 351, L. 1989; amd. Sec. 9, Ch. 532, L. 1997; amd. Sec. 7, Ch. 227, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 227 near middle after "33-2-705" deleted "33-2-706". Amendment effective October 1, 2001.

Cross-References

Insurance Commissioner — fees and licenses, 33-2-708.

17-2-122. Repealed. Sec. 9, Ch. 351, L. 1989.

History: En. Sec. 3, Ch. 391, L. 1985.

17-2-123. Repealed. Sec. 9, Ch. 351, L. 1989.

History: En. Sec. 4, Ch. 391, L. 1985.

17-2-124 through 17-2-130 reserved.

17-2-131. Genetic engineering technology research and development account created. There is created in the current restricted subfund a restricted account for funds appropriated to Montana state university-Bozeman for applied genetic engineering technology research and development. Funds appropriated under section 2, Chapter 686, Laws of 1989, and money contributed by the Montana agriculture industry must be deposited in the account and are restricted to genetic engineering technology research and development only.

History: En. Sec. 1, Ch. 686, L. 1989; amd. sec. 36, Ch. 308, L. 1995.

Cross-References

Miscellaneous finance — University System, Title 20, ch. 25, part 4.

Part 2
Special Accounts

17-2-201. Contingent revolving accounts — when established. (1) The department of administration may authorize the establishment and maintenance at the state agencies or in the departments, boards, or commissions of contingent revolving accounts, transferring in trust to the business offices of the institutions sums of money as may appear necessary to be used by the institutions for the payment of demands requiring immediate cash payment. Demands include the payment of minor invoices, invoices for which the discount period is too short to take advantage of the discount if payment is made by warrant, freight and express charges, travel advances, postage, publications requiring remittance to accompany the order, and the establishment of cash change funds, all under specific regulations to be established by the department of administration.

(2) Each state agency granted a contingent revolving account shall report to the department of administration upon request all transactions involving the contingent revolving accounts, with proper vouchers for every payment. The department of administration may cancel the authorizations and recall the funds as it determines appropriate.

History: En. Sec. 4, Ch. 112, L. 1921; re-en. Sec. 195, R.C.M. 1921; re-en. Sec. 195, R.C.M. 1935; amd. Sec. 9, Ch. 80, L. 1961; amd. Sec. 1, Ch. 148, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-602; amd. Sec. 4, Ch. 48, L. 1997.

17-2-202. Retention of agency moneys. The department of administration may, in its discretion, permit any state agency to retain in its possession, under conditions the department of administration may prescribe, moneys that would otherwise be deposited in the agency fund as defined in 17-2-102. The department of administration may cancel this permission and require the deposit of the moneys with the state treasurer. However, the state treasurer, with the consent of the board of investments, shall designate depositories for the moneys and securities and require indemnifying bonds or pledged securities sufficient to adequately and properly secure the amounts deposited in the depositories.

History: En. Sec. 5, Ch. 112, L. 1921; re-en. Sec. 196, R.C.M. 1921; amd. Sec. 2, Ch. 157, L. 1931; re-en. Sec. 196, R.C.M. 1935; amd. Sec. 12, Ch. 147, L. 1963; amd. Sec. 3, Ch. 268, L. 1971; amd. Sec. 28, Ch. 326, L. 1974; amd. Sec. 7, Ch. 61, L. 1977; R.C.M. 1947, 79-603.

Cross-References

State Treasurer as treasurer of state agencies — deposits of money, 17-6-105.

17-2-203. Repealed. Sec. 7, Ch. 540, L. 1979.

History: En. Sec. 6, Ch. 112, L. 1921; re-en. Sec. 197, R.C.M. 1921; re-en. Sec. 197, R.C.M. 1935; R.C.M. 1947, 79-604.

Part 3

State and Local Charges for Services — Limit on Fund Balance

17-2-301. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Approving authority" means:

(a) in the case of a state agency, the approving authority as defined in 17-7-102;

(b) in the case of a local government entity, the local government entity's governing body.

(2) "Capital project" means the planned and necessary replacement or upgrade of building facilities, infrastructure, or equipment that is budgeted for by a state agency or a local government entity.

(3) (a) "Charge for services" or "charge" means a fee, charge, levy, or other assessment that is established by state agency rule or local government entity ordinance and that is:

(i) charged by the state agency or local government entity to a user of a service provided by the state agency or local government entity;

(ii) charged by the state agency or local government entity in exchange for a license, permit, or other type of grant of authority by the state agency or local government entity; or

(iii) collected exclusively to provide promotional or marketing services to the person on whom the charge is levied and that is not assessed or collected pursuant to Title 15.

(b) For the purposes of 17-2-302(1) or (3)(a) or 17-2-304, the term includes a fee, charge, levy, or other assessment established as provided in subsection (3)(a) and a fee, charge, levy, or other assessment established by statute.

(4) "Governing body" means the:

(a) board of county commissioners in the case of a county;

(b) municipal commission in the case of a municipality;

(c) commission in the case of a consolidated government; or

(d) town meeting legislative body in the case of a town.

(5) "Legislative audit division" means the legislative audit division established by 5-13-301.

(6) "Local charge for services fund" or "local fund" means an accounting fund maintained by a local government entity for which the exclusive source of revenue is one or more charges for services or interest or other income on the fund.

(7) "Local government entity" means a county, city, consolidated government, or town.

(8) "Operating plan" means the financial plan used by a state agency or local government entity showing in detail the purposes for which the state agency's or local government entity's operating revenue will be spent in the current fiscal year of the state agency or local government entity and the fund from which the expenditures will be made.

(9) "State agency" means an agency as defined in 17-7-102.

(10) "State charge for services fund" or "state fund" means an account within the special revenue fund established by 17-2-102 for which the exclusive source of revenue is one or more charges for services or interest or other income on the fund.

History: En. Sec. 1, Ch. 270, L. 1997.

17-2-302. Limitation on balance in state or local charge for services fund — exceptions — audits. (1) Except as provided in this section, a state agency that deposits money into a state charge for services fund or a local government entity that deposits money into a local charge for services fund may not maintain a cash balance in the fund greater than twice the annual appropriation for that year or greater than the biennial appropriation from the account for the biennium, which includes that year from the state fund or local fund as shown in the state agency's or local government entity's initial operating plan.

(2) A state agency may maintain more money in a state fund or a local government entity may maintain more money in a local fund than is allowed by subsection (1) if the approving authority for the state agency certifies to the legislative finance committee, established by 5-12-201, or the manager of the service or function of the local government entity using money in a local fund certifies to the governing body of that entity:

(a) the date on which the state fund or local fund balance exceeded the limitation provided in subsection (1);

(b) the amount of money by which the state fund or local fund balance exceeded the limitation provided in subsection (1);

(c) the amount of money usually needed in the state fund or local fund for the operation of the service or function of the state agency or local government entity for 1 year, along with supporting facts;

(d) whether the amount of money within the state fund or local fund that is in excess of the limitation provided in subsection (1) is necessary for the operation of the service or function of the state agency or local government entity because of:

(i) an emergency;

(ii) a special or unusual circumstance; or

(iii) a fluctuation in the service, function, or charges for services of the agency or entity; and

(e) the facts and circumstances demonstrating the emergency, unusual circumstance, or fluctuation claimed in subsection (2)(d).

(3) The legislative audit division shall include in financial audits performed by or at the direction of the legislative audit division and an independent auditor shall include in an audit performed by the independent auditor pursuant to Title 2, chapter 7, part 5, a determination of whether money is or has been retained in a state charge for services fund or in a local charge for services fund contrary to the requirements of:

(a) this section; or

(b) 17-2-303.

(4) Except as otherwise provided in 17-2-301(3)(b), this section does not apply to:

(a) a charge for services made by one state agency to another state agency or by one local government entity to another local government entity;

(b) a state charge for services fund or a local charge for services fund used only for replacement of buildings or to pay the costs of other future capital projects;

(c) a fee, charge, tax, levy, or other assessment the amount of which is established by statute;

(d) fees, charges, and payments established pursuant to the revolving fund programs created by and administered pursuant to Title 75, chapter 5, part 11, and Title 75, chapter 6, part 2; or

(e) charges for services deposited in accordance with law into:

(i) a debt service or bond reserve fund;

(ii) the state general fund;

(iii) a county general fund; or

(iv) a city, town, or consolidated government general fund.

History: En. Sec. 2, Ch. 270, L. 1997.

17-2-303. Reduction of charge required. A state agency that maintains a cash balance in a state charge for services fund or a local government entity that maintains a cash balance in a local charge for services fund contrary to the limitation provided in 17-2-302(1) for more than 60 days shall, within 120 days after the end of the 60-day period, reduce the charge for services or, in the case of a state fund or local fund into which two or more charges for service are deposited, reduce one or more charges for services specified by the state agency or local government entity until the cash balance in the state fund or local fund complies with the limitation in 17-2-302(1).

History: En. Sec. 3, Ch. 270, L. 1997.

17-2-304. Reports required. (1) The approving authority for a state agency shall annually report in writing to the legislative finance committee by August 1:

(a) each state agency that had a cash balance in a state charge for services fund contrary to the limitation provided in 17-2-302(1) during the previous 12 months;

(b) the facts certified for each state agency by the approving authority pursuant to 17-2-302(2);

(c) each state agency that has complied with the requirements of 17-2-303 and the circumstances of the agency's compliance; and

(d) each state agency that has not complied with 17-2-303 and the circumstances of the agency's noncompliance.

(2) The director of the department of administration shall report to the legislature at the time and in the manner required by 5-11-210 a list of each local government entity that had a balance in a local charge for services fund contrary to the limitation provided by 17-2-302(1) or that failed to reduce the charge as provided in 17-2-303, or both, during the previous 12 months.

History: En. Sec. 4, Ch. 270, L. 1997; amd. Sec. 42, Ch. 483, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 483 in (2) near beginning after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

Part 4
Full Cost Accounting Act

Part Compiler's Comments

Effective Date: Section 9, Ch. 489, L. 2001, provided that this part is effective on passage and approval. Approved May 1, 2001.

Termination: Section 10, Ch. 489, L. 2001, provided that this part terminates December 31, 2002.

17-2-401. *(Temporary)* **Short title.** This part may be cited as the "Full Cost Accounting Act". *(Terminates December 31, 2002—sec. 10, Ch. 489, L. 2001.)*

History: En. Sec. 1, Ch. 489, L. 2001.

17-2-402. *(Temporary)* **Legislative findings and declarations.** (1) The legislature finds that acknowledging the complete costs of agency programs and services enables policymakers to develop more informed decisions, identify opportunities for streamlining programs and services, facilitate cost-saving efforts, and better plan for the future.

(2) The legislature further finds that applying a full cost accounting model may result in the following benefits:

(a) agency rates and fees for goods and services that are set correctly and fairly;

(b) agency budget requests that are more clear and defensible; and

(c) programs or services that may be operated more effectively or offered for less cost.

(3) The legislature further finds that full cost accounting serves different goals and audiences than traditional government accounting reports.

(4) Therefore, the legislature declares that there is a compelling public need to adopt a full cost accounting model to isolate state agency program costs. *(Terminates December 31, 2002—sec. 10, Ch. 489, L. 2001.)*

History: En. Sec. 2, Ch. 489, L. 2001.

17-2-403. *(Temporary)* **Policy and purpose.** The purpose of this part is to provide the legislature, the executive branch, and the public with a detailed description of individual program costs to:

(1) identify cost-effective methods of providing goods and services;

(2) assist the legislature in making decisions regarding the appropriation of public revenue; and

(3) establish rates and fees that reflect the true cost of providing goods and services. *(Terminates December 31, 2002—sec. 10, Ch. 489, L. 2001.)*

History: En. Sec. 3, Ch. 489, L. 2001.

17-2-404. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Committee" means the economic affairs interim committee provided for in 5-5-223.

(2) "Direct costs" means costs that are clearly and exclusively associated with an agency program or service.

(3) "Executive branch" means the executive branch of state government referred to in Article III, section 1, and Article VI of the Montana constitution.

(4) "Executive oversight" means the salary and expenses of an agency director, deputy director, or advisory board or commission.

(5) "Full cost accounting" means a systematic approach for identifying, aggregating, and reporting the actual costs of agency programs or services by accounting for all monetary resources used or committed by agency programs or services.

(6) "Indirect costs" means costs that are not exclusively related to an agency program or service and that benefit at least one other agency program or service. For the purposes of 17-2-405, indirect costs include but are not limited to the following services:

(a) accounting and payroll;

(b) human resource;

(c) legal;

(d) purchasing and procurement;

(e) data processing;

(f) records management; and

(g) executive oversight.

(7) "Program" means any legislatively or administratively created function, project, or duty of an agency. *(Terminates December 31, 2002—sec. 10, Ch. 489, L. 2001.)*

History: En. Sec. 4, Ch. 489, L. 2001.

17-2-405. *(Temporary)* **Full cost accounting pilot program — duties of divisions, bureaus, units, and programs — cost factors — reporting requirements.** (1) Beginning July 1, 2001, each division, bureau, unit, or program listed in subsection (2) shall establish a full cost accounting model to determine the total cost of providing services in-house, using the cost factors provided for in subsection (3).

(2) The following divisions, bureaus, units, or programs shall establish a full cost accounting model:

(a) central stores program within the department of administration;

(b) marketing unit of the travel promotion and development division within the department of commerce;

(c) nursery program of the forestry division within the department of natural resources and conservation;

(d) plan and specification review program of the public water supply section within the department of environmental quality;

(e) chemical dependency bureau within the department of public health and human services;

(f) motor pool unit within the department of transportation;

(g) state hail program and state grain laboratory bureau within the department of agriculture; and

(h) capitol grounds maintenance program within the department of fish, wildlife, and parks.

(3) The full cost accounting model must contain the following cost factors:

(a) direct costs, including but not limited to:

(i) employee wages, benefits, and pensions;

(ii) supplies and materials;

(iii) travel;
(iv) printing;
(v) rent;
(vi) utilities;
(vii) interest on capital items;
(viii) facility and equipment costs;
(ix) communications; and
(x) other costs expended for the exclusive benefit of the program; and
(b) indirect costs.

(4) Each division, bureau, unit, or program shall prepare and deliver a final report of its findings to the committee, the legislative finance committee, and the legislative auditor no later than September 1, 2002. Each report must contain:

(a) the true cost of providing a service or program;
(b) issues associated with implementing and administering a full cost accounting model;
(c) recommendations for changing the full cost accounting model to ensure the effective collection and use of information; and
(d) any recommendation to privatize functions within the departments, which must be submitted for review according to the provisions of Title 2, chapter 8, part 3. *(Terminates December 31, 2002—sec. 10, Ch. 489, L. 2001.)*

History: En. Sec. 5, Ch. 489, L. 2001.

CHAPTER 3

FEDERAL REVENUES AND ENDOWMENTS

Part 1 — Federal Assistance Management

17-3-101. Purpose.
17-3-102. Definitions.
17-3-103. Repealed.
17-3-104. Repealed.
17-3-105. Governor authorized to accept funds — designation of state agency.
17-3-106. Fiscal officer for receipt of federal grants.
17-3-107. Federal funds for welfare of Indians.
17-3-108. Approved budget amendment.
17-3-109. Repealed.
17-3-110. Statewide cost allocation plan.
17-3-111. Indirect cost rates — allocation.

Part 2 — Distribution of Federal Return on State Resources

17-3-201. Repealed.
17-3-202 through 17-3-210 reserved.
17-3-211. Forest reserve money and other federal funds.
17-3-212. Apportionment of forest reserve funds and other federal funds among counties.
17-3-213. Allocation of forest reserve funds and other federal funds — options provided in federal law.
17-3-214. Repealed.
17-3-215 through 17-3-220 reserved.
17-3-221. State treasurer to be custodian of money received under Taylor Grazing Act.
17-3-222. Apportionment of money to counties.
17-3-223 through 17-3-230 reserved.
17-3-231. Flood Control Act — distribution of revenues to counties.
17-3-232. Deposit and expenditure of funds by counties.
17-3-233 through 17-3-239 reserved.
17-3-240. Federal mineral leasing funds.
17-3-241. Mineral impact account.

Part 3 — Federal Sums in Lieu of Taxes

17-3-301. Definitions.
17-3-302. Requests for sums in lieu of taxes and agreements to perform services.
17-3-303. Basis for amount of payment.
17-3-304. Duplicate of agreement — filing — receipt for tax.
17-3-305. Disposal of moneys.

Parts 4 through 9 reserved

Part 10 — Endowments

17-3-1001. State institutions which may take by gift, bequest, or grant.
17-3-1002. Persons who may make gifts to state institutions.
17-3-1003. Support of state institutions.
17-3-1004. Disbursement of funds.

Chapter Cross-References

Receipt of federal revenue for:
Local public works programs, 7-13-142, 7-13-143.
School food service, 20-10-201.
State Library Commission, 22-1-103.
Law Enforcement Academy, 44-10-202.
Federal funds for tuberculosis control, 50-17-103.
Aid to airports, 67-10-405.
Municipal and regional airport authorities, 67-11-305.
Flood control and water conservancy districts, 76-5-1110.
Open-space land, 76-6-109.

Part 1
Federal Assistance Management

17-3-101. Purpose. The purpose of this part is to provide more complete information regarding federal assistance programs to the governor, state agencies, and the legislature and coordinate federally assisted programs with other state programs.

History: En. 79-2702 by Sec. 2, Ch. 259, L. 1975; R.C.M. 1947, 79-2702.

17-3-102. Definitions. As used in this part, the following definitions apply:

(1) "Application" means the form specified by a federal agency.

(2) "Federal assistance programs" means any financial assistance made to a state agency by an agency of the United States government, whether a grant, loan, gift, contract, or in any other form.

(3) "Grantee agency" means any agency of state government receiving federal funds.

(4) "Indirect costs" means costs that benefit more than one agency or program and that are not readily assignable to the agency or program specifically benefiting.

(5) "Service agency" means state agencies that provide goods, facilities, and services to a grantee agency.

(6) "State agency" means any agency of state government eligible to apply for and receive federal funds.

History: (1), (2), (5)En. 79-2703 by Sec. 3, Ch. 259, L. 1975; Sec. 79-2703, R.C.M. 1947; (3), (4), (6)En. 79-1020 by Sec. 1, Ch. 223, L. 1975; Sec. 79-1020, R.C.M. 1947; R.C.M. 1947, 79-1020, 79-2703; amd. Sec. 5, Ch. 48, L. 1997.

17-3-103. Repealed. Sec. 1, Ch. 176, L. 1979.

History: En. 79-2704 by Sec. 4, Ch. 259, L. 1975; R.C.M. 1947, 79-2704.

17-3-104. Repealed. Sec. 2, Ch. 109, L. 1993.

History: En. 79-2706 by Sec. 6, Ch. 259, L. 1975; R.C.M. 1947, 79-2706.

17-3-105. Governor authorized to accept funds — designation of state agency. (1) The governor is authorized to accept on behalf of the state any federal assistance funds made available by act of congress for programs that are consistent with the needs and goals of the state and its citizens and that are not prohibited by the provisions of this part or other applicable law.

(2) The governor shall designate, unless otherwise specified by state or federal law or regulation, the state agency to administer the accepted federal assistance program.

History: En. 79-2705 by Sec. 5, Ch. 259, L. 1975; R.C.M. 1947, 79-2705.

Cross-References

Federal aid, 2-15-137.

17-3-106. Fiscal officer for receipt of federal grants. (1) The state treasurer is designated as the fiscal officer of the state to receive from the United States government or any of its agencies all funds that may be made available as a grant to the state of Montana under any act of congress, or otherwise, for any purpose or use. The state treasurer shall, upon receipt of the funds, deposit the funds in the proper fund in the state treasury.

(2) A state agency may return from the state treasury, through the state treasurer, any federal funds and the interest earned on the funds that may not be retained by the state according to federal law or the terms of the federal grant that made the funds available. The funds are statutorily appropriated, as provided in 17-7-502, to the state treasurer for the purpose of returning the funds under the provisions of this subsection.

History: En. Sec. 1, Ch. 119, L. 1949; R.C.M. 1947, 79-210; amd. Sec. 1, Ch. 107, L. 1993; amd. Sec. 6, Ch. 48, L. 1997.

Cross-References

Fund structure, 17-2-102.

17-3-107. Federal funds for welfare of Indians. If and whenever the congress of the United States shall authorize the administration of federal appropriations for the welfare of the Indians of Montana through the agency of public departments and bureaus of this state, full power and authority is conferred upon such state agencies to administer the expenditure of such federal appropriations for the welfare of such Indians within the scope of the powers conferred upon such departments by law.

History: En. Sec. 1, Ch. 65, L. 1927; re-en. Sec. 5668.14, R.C.M. 1935; R.C.M. 1947, 79-1601.

17-3-108. Approved budget amendment. Financing for new or expanded programs from federal assistance program sources may be made available only by approved budget amendment.

History: En. 79-2707 by Sec. 7, Ch. 259, L. 1975; amd. Sec. 9, Ch. 61, L. 1977; R.C.M. 1947, 79-2707; amd. Sec. 1, Ch. 109, L. 1993.

Cross-References

Budget amendments, Title 17, ch. 7, part 4.

17-3-109. Repealed. Sec. 19, Ch. 347, L. 1997.

History: En. 79-2708 by Sec. 8, Ch. 259, L. 1975; R.C.M. 1947, 79-2708.

17-3-110. Statewide cost allocation plan. The director of the department of administration shall annually prepare a statewide cost allocation plan distributing service agency indirect costs among the grantee agencies, in accordance with principles and procedures established by federal regulations and guidelines.

History: En. 79-1021 by Sec. 2, Ch. 223, L. 1975; R.C.M. 1947, 79-1021; amd. Sec. 1, Ch. 579, L. 1983.

17-3-111. Indirect cost rates — allocation. (1) Grantee agencies shall, in accordance with federal regulations and guidelines, negotiate indirect cost rates and endeavor, to the fullest extent possible, to recover indirect costs of federal assistance programs.

(2) Indirect costs recovered from federal sources pursuant to the statewide cost allocation plan provided in 17-3-110, except those costs recovered by a unit of the university system, must be deposited in the general fund.

History: En. 79-1022 by Sec. 3, Ch. 223, L. 1975; R.C.M. 1947, 79-1022; amd. Sec. 1, Ch. 37, Sp. L. November 1993.

Part 2
Distribution of Federal Return on State Resources

Part Cross-References

School food service, 20-10-201.
Aid to highways, 60-3-101.
Flood control and water conservancy districts, 76-5-1110.

17-3-201. Repealed. Sec. 6, Ch. 20, Sp. L. June 1986.

History: En. Sec. 1, Ch. 246, L. 1973; amd. Sec. 1, Ch. 357, L. 1977; R.C.M. 1947, 79-211; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 541, L. 1983.

17-3-202 through 17-3-210 reserved.

17-3-211. Forest reserve money and other federal funds. (1) The state treasurer, for the purpose of carrying out the provisions of 16 U.S.C. 500, Public Law 106-393, and all acts subsequent to them, shall divide and distribute all forest reserve and Public Law 106-393 funds received by the state, plus interest earned, to and among the several counties entitled to the funds and pay the amounts to the several county treasurers of the counties within 30 days after receiving full payment, as directed by the state auditor.

(2) The forest reserve money and the Public Law 106-393 money must be invested and all investment earnings credited to the forest reserve account or the Public Law 106-393 account, as appropriate.

History: En. Sec. 1, Ch. 26, L. 1915; re-en. Sec. 175, R.C.M. 1921; re-en. Sec. 175, R.C.M. 1935; R.C.M. 1947, 79-203; amd. Sec. 1, Ch. 712, L. 1985; amd. Sec. 1, Ch. 334, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 334 in (1) in two places inserted references to Public Law 106-393; near beginning of (2) after "money" inserted "and the Public Law 106-393 money" and at end inserted "or the Public Law 106-393 account, as appropriate"; and made minor changes in style. Amendment effective July 1, 2001.

17-3-212. Apportionment of forest reserve funds and other federal funds among counties. (1) The forest reserve funds, all Public Law 106-393 funds, and earned interest are statutorily appropriated, as provided in 17-7-502, from the federal special revenue fund to the state auditor. The state auditor shall apportion all forest reserve funds, all Public Law 106-393 funds, and earned interest for allocation among the counties in which the forest reserve is situated based upon federal law and this section.

(2) The state treasurer shall pay the apportioned amounts plus interest, as provided in 17-3-211, to the respective counties.

History: En. Sec. 2, Ch. 26, L. 1915; re-en. Sec. 176, R.C.M. 1921; re-en. Sec. 176, R.C.M. 1935; R.C.M. 1947, 79-204; amd. Sec. 16, Ch. 703, L. 1985; amd. Sec. 2, Ch. 712, L. 1985; amd. Sec. 11, Ch. 389, L. 1999; amd. Sec. 2, Ch. 334, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 334 in (1) in first and second sentences after "funds" inserted "all Public Law 106-393 funds" and at end of second sentence substituted "based upon federal law and this section" for "in proportion to the acreage of the forest reserve in each county". Amendment effective July 1, 2001.

17-3-213. Allocation of forest reserve funds and other federal funds — options provided in federal law. (1) The board of county commissioners in each county shall decide among payment options provided in subsections (2) through (4), as provided in Public Law 106-393, to determine how the forest reserve funds and Public Law 106-393 funds apportioned to each county must be distributed by the county treasurer pursuant to this section.

(2) If a board of county commissioners chooses to receive a payment that is 25% of the revenue derived from national forest system lands, as provided in 16 U.S.C. 500, all funds received must be distributed as provided in subsection (5).

(3) (a) Except as provided in subsection (4), if a county elects to receive the county's full payment under Public Law 106-393, a minimum of 80% up to a maximum of 85% of the county's full payment must be designated by the county for distribution as provided in subsection (5).

(b) The balance not distributed pursuant to subsection (3)(a) may be allocated by the county in accordance with Public Law 106-393.

(4) If a county's full payment is less than $100,000, the county may elect to distribute up to 100% of the payment as provided in subsection (5).

(5) The total amount designated by a county in accordance with subsection (3)(a) or (4) must be distributed as follows:

(a) to the general road fund, 66 ⅔% of the amount designated;

(b) to the following countywide school levies, 33 ⅓% of the amount designated:

(i) county equalization for elementary schools provided for in 20-9-331;

(ii) county equalization for high schools provided for in 20-9-333;

(iii) the county transportation fund provided for in 20-10-146; and

(iv) the elementary and high school district retirement fund obligations provided for in 20-9-501.

(6) The apportionment of money to the funds provided for under subsection (5)(b) must be made by the county superintendent based on the proportion that the mill levy of each fund

bears to the total number of mills for all the funds. Whenever the total amount of money available for apportionment under subsection (5)(b) is greater than the total requirements of a levy, the excess money and any interest income must be retained in a separate reserve fund, to be reapportioned in the ensuing school fiscal year to the levies designated in subsection (5)(b).

(7) In counties in which special road districts have been created according to law, the board of county commissioners shall distribute a proportionate share of the 66 ⅔% distributed under subsection (5)(b) for the general road fund to the special road districts within the county based upon the percentage that the total area of the road district bears to the total area of the entire county.

History: En. Sec. 3, Ch. 26, L. 1915; re-en. Sec. 177, R.C.M. 1921; amd. Sec. 1, Ch. 66, L. 1931; re-en. Sec. 177, R.C.M. 1935; R.C.M. 1947, 79-205; amd. Sec. 1, Ch. 413, L. 1983; amd. Sec. 5, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 711, L. 1991; amd. Sec. 3, Ch. 334, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 334 substituted (1) concerning determination of payment options and distribution of forest reserve and Public Law 106-393 funds for "The forest reserve funds so apportioned to each county must be apportioned by the county treasurer in each county as follows"; inserted (2) concerning 25% payment distributed pursuant to subsection (5); inserted (3) concerning 80% to 85% of full payment being used pursuant to subsection (5) and the remainder allocated by the county pursuant to Public Law 106-393; inserted (4) concerning full payment of less than $100,000; inserted introductory clause of (5); in (5)(a) at end substituted "amount designated" for "total amount received"; in (5)(b) at end substituted "amount designated" for "total sum received"; in (6) near beginning of second sentence substituted "subsection (5)(b)" for "this section"; near middle of (7) after "66 2/3%" substituted "distributed under subsection (5)(b)" for "of the total amount received"; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Use of county road fund, 7-14-2513.

Basic county tax and other revenue for county equalization of elementary district BASE funding program, 20-9-331.

17-3-214. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 4, Ch. 26, L. 1915; re-en. Sec. 178, R.C.M. 1921; re-en. Sec. 178, R.C.M. 1935; R.C.M. 1947, 79-206.

17-3-215 through 17-3-220 reserved.

17-3-221. State treasurer to be custodian of money received under Taylor Grazing Act. The state treasurer is the custodian of all money that the treasurer of the United States transfers to the state of Montana under the terms of section 10 of the Taylor Grazing Act, 43 U.S.C. 315i, to be expended as the legislature may prescribe. The money must be deposited in the federal special revenue fund.

History: En. Sec. 1, Ch. 146, L. 1935; re-en. Sec. 191.1, R.C.M. 1935; R.C.M. 1947, 79-701; amd. Sec. 94, Ch. 42, L. 1997; amd. Sec. 10, Ch. 532, L. 1997.

17-3-222. Apportionment of money to counties. (1) It is the duty of the state treasurer to properly apportion and allocate the money received under 17-3-221 to the county treasurers, who shall allocate the money as follows:

(a) 50% to the county general fund; and

(b) 50% to the elementary BASE funding programs of the school districts in the county.

(2) The payments from the state to the county treasurers provided for in subsection (1) are statutorily appropriated as provided in 17-7-502.

History: En. Sec. 2, Ch. 146, L. 1935; re-en. Sec. 191.2, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1937; amd. Sec. 1, Ch. 102, L. 1939; amd. Sec. 1, Ch. 96, L. 1949; R.C.M. 1947, 79-702; amd. Sec. 2, Ch. 22, L. 1997; amd. Sec. 11, Ch. 532, L. 1997; amd. Sec. 45, Ch. 51, L. 1999.

Cross-References

Basic county tax and other revenue for county equalization of elementary district BASE funding program, 20-9-331.

17-3-223 through 17-3-230 reserved.

17-3-231. Flood Control Act — distribution of revenues to counties. All moneys received or hereafter to be received by the state from the secretary of the treasury of the United States, under and by virtue of the Flood Control Act of 1954, under 33 U.S.C. 701c-3, shall be distributed by the state to the county treasurers of the counties of the state wherein the flood control land is situated.

History: En. Sec. 1, Ch. 156, L. 1959; R.C.M. 1947, 79-2101.

Cross-References

Flood plain and floodway management, Title 76, ch. 5.

17-3-232. Deposit and expenditure of funds by counties. All moneys received or to be received by the county treasurers of the counties of the state wherein such flood control land is situated shall be deposited in the funds designated as the county common school tax fund and the general public road fund and shall be expended as follows: of all moneys received or to be received, 50% shall be expended for the benefit of the county common schools in the county concerned and 50% shall be expended for the benefit of the general public roads in the county concerned.

History: En. Sec. 2, Ch. 156, L. 1959; R.C.M. 1947, 79-2102.

Cross-References

City and county road funds, 7-14-2512.

Basic county tax and other revenue for county equalization of elementary district BASE funding program, 20-9-331.

17-3-233 through 17-3-239 reserved.

17-3-240. Federal mineral leasing funds. (1) All money paid to the state pursuant to 30 U.S.C. 191 must be deposited in the state general fund and must be distributed as provided in subsections (2) and (3).

(2) At the conclusion of fiscal year 2002, the state treasurer shall distribute all money received in fiscal year 2002 in excess of $21,756,000 pursuant to subsection (3). At the conclusion of fiscal year 2003, the state treasurer shall distribute all money received in fiscal year 2003 in excess of $20,474,000 pursuant to subsection (3). At the conclusion of fiscal year 2004, the state treasurer shall distribute 12.5% of all money received pursuant to subsection (3). At the conclusion of fiscal year 2005 and each fiscal year thereafter, the state treasurer shall distribute 25% of all money received pursuant to subsection (3).

(3) On August 15 following the close of the fiscal year, the state treasurer shall distribute the distributions in subsection (2) to the mineral impact account established in 17-3-241. The distribution to the eligible counties must be allocated based on the proportion that the total amount of revenue generated by mineral extraction in an eligible county bears to the total amount of money received by the state.

History: En. Sec. 1, Ch. 594, L. 2001.

Compiler's Comments

Effective Date — Applicability: Section 5(2), Ch. 594, L. 2001, provided that this section is effective January 1, 2002, and applies to mineral royalties received after December 31, 2001.

17-3-241. Mineral impact account. There is a mineral impact account. Money must be deposited in the impact account as provided in 17-3-240. The money in the impact account must be distributed to counties from which the minerals were produced that resulted in the deposit of the mineral royalty revenue in the impact account. Beginning July 1, 2003, the impact account is statutorily appropriated, as provided in 17-7-502.

History: En. Sec. 2, Ch. 594, L. 2001.

Compiler's Comments

Effective Date — Applicability: Section 5(2), Ch. 594, L. 2001, provided that this section is effective January 1, 2002, and applies to mineral royalties received after December 31, 2001.

Part 3

Federal Sums in Lieu of Taxes

Part Cross-References

Rate of privilege — tax credit for federal payments in lieu of taxes, 15-24-1204.

17-3-301. Definitions. The following definitions shall be applied to the terms used in this part:

(1) "Agreement" shall mean contract and shall include renewals and alterations of a contract.

(2) "Department" shall mean the department of revenue of the state of Montana.

(3) "Project" shall mean any resettlement project or rural rehabilitation project for resettlement purposes of the United States, located within this state, and shall include persons inhabiting such project.

(4) "Services" shall mean such public and state functions as are performed for property in and persons residing within this state.

(5) "State" shall mean the state of Montana.

(6) "United States" shall mean the United States of America.

History: **En. Sec. 1, Ch. 58, L. 1939; amd. Sec. 203, Ch. 516, L. 1973; R.C.M. 1947, 84-5501.**

17-3-302. Requests for sums in lieu of taxes and agreements to perform services. The department is hereby authorized and empowered to make requests of the United States for and on behalf of this state for payment of such sums in lieu of taxes as the United States may agree to pay and to consummate agreements with the United States, in the name of this state, for the performance of services by the state for the benefit of projects and for the payment by the United States to the state, in one or more installments, of such sums in lieu of taxes.

History: **En. Sec. 2, Ch. 58, L. 1939; amd. Sec. 204, Ch. 516, L. 1973; R.C.M. 1947, 84-5502.**

17-3-303. Basis for amount of payment. The amount of any payment of sums in lieu of taxes may be based on the estimated cost to the state of performing services for the benefit of the projects during the period of agreement, after taking into consideration the benefits to be derived by the state from such projects, but shall not be in excess of the taxes which would result to the state for the period if the real property of the projects within the state were taxable.

History: **En. Sec. 3, Ch. 58, L. 1939; R.C.M. 1947, 84-5503.**

17-3-304. Duplicate of agreement — filing — receipt for tax. A duplicate copy of every agreement for payment of sums in lieu of taxes shall be filed in the office of the treasurer of this state. On or before the date on which any payment of sums in lieu of taxes is due, the state treasurer shall present a bill to the United States in the name of the state in the amount of such payment. The state treasurer shall give to the United States a receipt in the name of the state for all payments of sums in lieu of taxes.

History: **En. Sec. 4, Ch. 58, L. 1939; R.C.M. 1947, 84-5504.**

17-3-305. Disposal of moneys. All payments of sums in lieu of taxes received by this state shall be deposited in funds according to the state levies.

History: **En. Sec. 5, Ch. 58, L. 1939; amd. Sec. 1, Ch. 42, L. 1947; R.C.M. 1947, 84-5505.**

Parts 4 through 9 reserved

Part 10
Endowments

Part Cross-References

Montana State University - Bozeman, 20-25-424.

17-3-1001. State institutions which may take by gift, bequest, or grant. (1) The state of Montana, units of the Montana university system, the Montana school for the deaf and blind, all institutions in the department of corrections and the department of public health and human services, and any institutions now created or established or which may be created or established and supported in whole or in part by the state for any purpose may accept gifts, donations, grants, devises, or bequests of real or personal property from any source. Gifts, donations, grants, bequests, or devises may be made directly to the state, in the name of any of the institutions, to any officer or board of the institutions, or to any person in trust for the institutions.

(2) In the event it is made directly to any institution or to any officer or board of any institution, the gift, donation, grant, devise, or bequest is a gift, donation, grant, devise, or bequest to the state and must be administered and used by the state for the particular purpose for which it was given, donated, granted, bequeathed, or devised. In the event that a particular purpose is not mentioned in the gift, grant, devise, or bequest, then it must be used for the general support, maintenance, or improvement of the institution by the state.

History: **En. Sec. 1, Ch. 17, L. 1913; re-en. Sec. 6978, R.C.M. 1921; re-en. Sec. 6978, R.C.M. 1935; amd. Sec. 96, Ch. 199, L. 1965; R.C.M. 1947, 91-105; amd. Sec. 3, Ch. 540, L. 1979; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 55, Ch. 546, L. 1995.**

Cross-References

Sale of property when resolution passed after hearing — appeal procedure, 20-6-604.
Community college — acceptance of donations, 20-15-109.
Fire services training school — acceptance of gifts and grants — contractual agreements, 20-31-401.
Department of Corrections, 53-1-202.
Planning board — acceptance and administration of gifts and donations, 76-1-408.
Acquisition and designation of real property by public body, 76-6-106.
Acquisition of conservation easements by qualified private organizations, 76-6-204.
Conservation district — acquisition and management of property, 76-15-404.
Board of Land Commissioners — acceptance of gifts, donations, grants, legacies, and devises to state, 77-1-213.

17-3-1002. Persons who may make gifts to state institutions. (1) A donation, gift, grant, bequest, devise, or testamentary disposition of property, real or personal, may be made by any person over the age of 18 years and of sound mind to the state, a unit of the Montana university system, the state school for deaf and blind, an institution in the department of corrections or the department of public health and human services, and any and all institutions now created or established or that may be created or established and supported, in whole or in part, by the state for any purpose. Any person, corporation, or association of persons may make any gift, donation, or grant of property, real or personal, to the state, or to any of the institutions referred to in this section.

(2) In the event that any gift, donation, grant, devise, or bequest is made to any institution or to any officer or board of any institution, the same must be construed as a gift, donation, grant, devise, or bequest to the state and must be administered and used for the state for the particular purpose for which the same was given, donated, granted, bequeathed, or devised. In the event that a particular purpose is not mentioned in the gift, grant, devise, or bequest, then the same must be used for the general support, maintenance, or improvement of the institution by the state.

History: **En. Sec. 2, Ch. 17, L. 1913; re-en. Sec. 6979, R.C.M. 1921; re-en. Sec. 6979, R.C.M. 1935; amd. Sec. 97, Ch. 199, L. 1965; R.C.M. 1947, 91-106; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 56, Ch. 546, L. 1995.**

17-3-1003. Support of state institutions. (1) For the support and endowment of each state institution, there is annually and perpetually appropriated, after any deductions made under 77-1-109 and Title 77, chapter 1, part 6, the income from all permanent endowments for the institution and from all land grants as provided by law. All money received or collected in connection with permanent endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose whatever, except revenue pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system and for the refunding of obligations or money that constitutes temporary deposits, all or part of which may be subject to withdrawal or repayment, must be paid over to the state treasurer who shall deposit the money to the credit of the proper fund.

(2) Except as provided in subsections (1) and (3), all money received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution must be deposited with the state treasurer of Montana for each institution, to the credit of the state special revenue fund.

(3) Except as provided in 77-1-109, all money received from the sale of timber from lands granted to a state institution must be deposited to the credit of the permanent trust fund for the support of the institution.

History: **(1)En. Sec. 3, Ch. 112, L. 1921; re-en. Sec. 194, R.C.M. 1921; re-en. Sec. 194, R.C.M. 1935; amd. Sec. 3, Ch. 14, L. 1941; amd. Sec. 11, Ch. 147, L. 1963; amd. Sec. 3, Ch. 298, L. 1973; Sec. 79-601, R.C.M. 1947; (2)En. Sec, 1, Ch. 120, L. 1909; re-en. Sec. 1922, R.C.M. 1921; re-en. Sec. 1922, R.C.M. 1935; amd. Sec. 1, Ch. 89, L. 1961; amd. Sec. 24, Ch. 147, L. 1963; amd. Sec. 5, Ch. 286, L. 1977; Sec. 79-1401, R.C.M. 1947; R.C.M. 1947, 79-601, 79-1401; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 3, Ch. 700, L. 1989; amd. Sec. 2, Ch. 14, Sp. L. January 1992; amd. Sec. 5, Ch. 533, L. 1993; amd. Sec. 3, Ch. 122, L. 1999.**

Cross-References

The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).
Fund structure, 17-2-102.
Miscellaneous finance — University System, Title 20, ch. 25, part 4.

17-3-1004. Disbursement of funds. (1) The money received by the state treasurer under the provisions of 17-3-1003 may be paid out of the treasury only on a warrant issued by the treasurer in payment of claims for expenses actually incurred for the support and maintenance of the institution filing the claims.

(2) In the payment of claims presented by a state institution entitled to interest and income from land grants or money from a land grant, a warrant may not be drawn against the appropriation made by the state out of the general fund for the maintenance of the institution filing the claim until interest and income money available for the payment of the items in the claim is exhausted.

History: (1)En. Sec. 2, Ch. 120, L. 1909; re-en. Sec. 1923, R.C.M. 1921; re-en. Sec. 1923, R.C.M. 1935; amd. Sec. 2, Ch. 89, L. 1961; Sec. 79-1402, R.C.M. 1947; (2)En. Sec. 3, Ch. 120, L. 1909; re-en. Sec. 1924, R.C.M. 1921; re-en. Sec. 1924, R.C.M. 1935; amd. Sec. 3, Ch. 89, L. 1961; amd. Sec. 25, Ch. 147, L. 1963; Sec. 79-1403, R.C.M. 1947; R.C.M. 1947, 79-1402, 79-1403; amd. Sec. 10, Ch. 325, L. 1995.

CHAPTER 4

DEBT COLLECTION

Part 1 — Debt Collection Service

17-4-101. Definitions.
17-4-102. Accounts of persons indebted to state.
17-4-103. Collection of claims by department.
17-4-104. Circumstances when department shall assist.
17-4-105. Authority to collect debt — offsets.
17-4-106. Agency owed debt to receive all money collected — exception.
17-4-107. Writeoff procedures.
17-4-108. Circumstances under which previously written-off debt may be collected.
17-4-109. Debts not collectible under this part.
17-4-110. State agencies to adopt rules.
17-4-111. Right of hearing to aggrieved persons.

Chapter Cross-References

Counterclaim against state, Rule 13(d), M.R.Civ.P. (see Title 25, ch. 20).

Debtor and creditor relationships, Title 31, ch. 2.

Part 1
Debt Collection Service

17-4-101. Definitions. In this part, the following definitions apply unless the context indicates otherwise:

(1) "Agency" includes:

(a) all offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, political subdivisions, and other entities or instrumentalities of this state government;

(b) with respect to delinquent taxes that the department is requested to collect, state and local entities whose personal property taxes are collected by the county treasurer; and

(c) the federal internal revenue service.

(2) "Department" means the department of revenue provided for in 2-15-1301.

History: En. 84-7102 by Sec. 2, Ch. 118, L. 1974; R.C.M. 1947, 84-7102; amd. Sec. 11, Ch. 325, L. 1995; amd. Secs. 1, 7, Ch. 589, L. 1995; amd. Sec. 1, Ch. 17, L. 1997; amd. Sec. 7, Ch. 48, L. 1997; amd. Sec. 1, Ch. 105, L. 1999.

17-4-102. Accounts of persons indebted to state. (1) The department may:

(a) examine and settle the accounts of persons indebted to agencies, certify the amount owed, and give the person a discharge;

(b) require a person presenting an account for settlement to be sworn and to answer, orally or in writing, as to any facts relating to the account.

(2) The certificate referred to in subsection (1)(a) must show by whom the payment is to be made, the amount of the payment, and the fund into which the payment is to be deposited. The certificates must be numbered in order, beginning with number 1 at the commencement of each fiscal year.

History: **(1)En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907; re-en. Sec. 151, R.C.M. 1921; Cal. Pol. C. Sec. 433; re-en. Sec. 151, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-101, R.C.M. 1947; (2)En. Sec. 421, Pol. C. 1895; re-en. Sec. 171, Rev. C. 1907; re-en. Sec. 152, R.C.M. 1921; Cal. Pol. C. Sec. 434; re-en. Sec. 152, R.C.M. 1935; amd. Sec. 2, Ch. 94, L. 1969; Sec. 79-102, R.C.M. 1947; R.C.M. 1947, 79-101(7), (8), 79-102; amd. Sec. 12, Ch. 325, L. 1995; amd. Sec. 2, Ch. 589, L. 1995.**

17-4-103. Collection of claims by department. (1) (a) The department may examine the collection of money due an agency and institute suits:

(i) in its name for official delinquencies in relation to the assessment, collection, and payment of the revenue;

(ii) against persons who possess public money or property and fail to pay over or deliver the money or property; and

(iii) against debtors of the agencies.

(b) The courts of the county where the seat of government is located have jurisdiction, without regard to the residence of the defendants, over the collection suits authorized by this section.

(2) Whenever a person has money or other personal property that belongs to the state by escheat or otherwise or has been entrusted with the collection, management, or disbursement of money, bonds, or interest accruing from the money or bonds, belonging to or held in trust by the state, and fails to render an account of the money or personal property to and make settlement with the department within the time prescribed by law or, when a particular time is not specified, fails to render an account and make settlement or fails to pay into the state treasury the money belonging to the state, upon being required to do so by the department, within 20 days after the requisition, the department shall state an account with that person, charging 25% damages and interest at the rate of 10% a year from the time of the failure. A copy of the account in a suit is prima facie evidence of the things stated in the account, but when the department cannot for want of information state an account, the department may in an action aver that fact and allege generally the amount of money or other property due or belonging to the state.

(3) (a) The department may assist in the collection of a delinquent account owing to an agency and may separately charge the agency that transferred the debt for the cost of assistance. The department may designate the percentage of collected proceeds to be retained for the cost of assistance. The cost of assistance for collecting personal property taxes that would otherwise be collected by the county treasurer must be allocated in the same manner in which the taxes are distributed.

(b) A delinquent personal property tax usually collected by the county treasurer may be collected by the department only on request of the board of county commissioners. The request must be accompanied by proof of the amount of tax due and proof of the delinquency. The board shall also provide proof that, at least 30 days before making the request, the county has notified the delinquent taxpayer by mail of the board's intention to request assistance from the department.

(4) The department may provide a collection service for the general purpose of centralizing the collection of all debts owed to agencies.

History: **(1)En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907; re-en. Sec. 151, R.C.M. 1921; Cal. Pol. C. Sec. 433; re-en. Sec. 151, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-101, R.C.M. 1947; (2)En. Sec. 424, Pol. C. 1895; re-en. Sec. 174, Rev. C. 1907; re-en. Sec. 155, R.C.M. 1921; Cal. Pol. C. Sec. 437; re-en. Sec. 155, R.C.M. 1935; Sec. 79-105, R.C.M. 1947; (3)En. 84-7103 by Sec. 3, Ch. 118, L. 1974; Sec. 84-7103, R.C.M. 1947; (4)En. 84-7101 by Sec. 1, Ch. 118, L. 1974; Sec. 84-7101, R.C.M. 1947; R.C.M. 1947, 79-101(12), 79-105, 84-7101, 84-7103; amd. Sec. 1, Ch. 419, L. 1989; amd. Sec. 1, Ch. 97, L. 1991; amd. Sec. 13, Ch. 325, L. 1995; amd. Sec. 16, Ch. 529, L. 1995; amd. Secs. 3, 7, Ch. 589, L. 1995.**

Cross-References

Collection of delinquent taxes — warrant for distraint, Title 15, ch. 1, part 7.

Reporting delinquent taxes, Title 15, ch. 16, part 3.

Liens and limitations, Title 15, ch. 16, part 4.

Collection by suit, Title 15, ch. 16, part 5.

Venue for actions to recover statutory penalty or forfeiture, 25-2-124.
Legal interest, 31-1-106.
Escheat, 70-1-203.

17-4-104. Circumstances when department shall assist. Subject to and in accordance with rules adopted by the department, the department shall render assistance in the collection of accounts owing to any state agency if all of the following procedures have been completed to the department's satisfaction:

(1) A state agency shall make all reasonable efforts to collect money owed to it and shall determine that the money and any interest or penalties are uncollectible in accordance with criteria for uncollectibility formulated by that agency.

(2) Once a state agency has determined that an account owed to it is uncollectible, it shall certify to the department the amount of the money, interest, and penalties, as accurately as can be determined. The department may require the agency to submit all relevant evidence and other information regarding the debt and may examine the records of any other state agency that may be pertinent in determining the uncollectibility of the debt, unless examination is specifically prohibited by law.

(3) If the department finds that the debt is uncollectible in accordance with the criteria for uncollectibility of money due that state agency, the department shall direct the agency to write off the debt on its accounts and transfer the debt to the department.

(4) Debts described in 17-4-105(4) need not be determined uncollectible for purposes of this section.

History: En. 84-7104 by Sec. 4, Ch. 118, L. 1974; amd. Sec. 1, Ch. 248, L. 1977; R.C.M. 1947, 84-7104; amd. Sec. 2, Ch. 419, L. 1989; amd. Sec. 14, Ch. 325, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
State agencies to adopt rules, 17-4-110.

17-4-105. Authority to collect debt — offsets. (1) Once a debt of an agency has been transferred to the department, the department may collect it. The department may contract with commercial collection agents for recovery of debts owed to agencies.

(2) The department shall, when appropriate, offset any amount due an agency from a person or entity against any amount, including refunds of taxes, owing the person or entity by an agency. The department may not exercise this right of offset until the debtor has first been notified by the department and been given an opportunity for a hearing pursuant to 15-1-211. An offset may not be made against any amount paid out as child support collected by the department of public health and human services. The department shall deduct from the claim and draw warrants for the amounts offset in favor of the respective agencies to which the debt is due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due the agencies, the amount available must be applied first to debts owed by reason of the nonpayment of child support and then in the manner determined appropriate by the department.

(3) (a) The department may enter into an agreement with the federal government to offset against tax refunds payable by the federal government and pay to this state those taxes or other debts owed to an agency of this state.

(b) (i) The department may enter into an agreement with another state or an agency of another state to offset against tax refunds payable by the other state or agency of the other state and pay to this state those taxes or other debts owed to this state or an agency of this state.

(ii) To facilitate an agreement of the kind authorized by subsection (3)(b)(i), the department may enter into an agreement that allows the other state or agency of the other state to offset against tax refunds payable by this state the whole or part of an amount owed for taxes to the other state or agency of the other state. However, the department may enter into an agreement of the type authorized by this subsection (3)(b)(ii) only if the other state or agency of the other state allows this state or an agency of this state to offset against tax refunds owed by the other state or agency of the other state taxes or other debts owed to this state or an agency of this state.

(c) A state or agency of another state entering into an agreement with the department pursuant to subsection (3)(b)(ii) may not exercise the offset against tax refunds unless the other state or agency of the other state has notified the taxpayer of the taxes due and has given the taxpayer an opportunity for review or appeal of the tax debt. Another state or agency of another state intending to offset taxes shall provide the department with proof of notification and opportunity for review or appeal before the offset is exercised.

(4) (a) A debt owed to the department of public health and human services or being collected by the department of public health and human services on behalf of any person or agency may be offset by the department if the debt is being enforced or collected by the department of public health and human services under Title IV-D of the Social Security Act.

(b) The debt need not be determined to be uncollectible as provided for in 17-4-104 before being transferred to the department for offset. The debt must have accrued through written contract, court judgment, or administrative order.

(c) Within 30 days following the notification provided for in subsection (2), the person owing a debt described in subsection (4)(a) may request a hearing. The request must be in writing and be mailed to the department. The person owing a debt is not entitled to a hearing if the amount of the debt has been the subject matter of any proceeding conducted for the purpose of determining the validity of the debt and a decision made as a result of that proceeding has become final. The hearing must initially be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. The department of public health and human services shall adopt rules governing the hearing procedures.

(5) If the department determines that a person or entity has refused or neglected to file a claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of the person or entity. If the claim is approved by the department, the claim has the same force and effect as though filed by the person or entity. The amount due any person or entity from the state or any agency of the state is the net amount otherwise owing the person or entity after any offset, as provided in this section.

History: (1)En. 84-7105 by Sec. 5, Ch. 118, L. 1974; amd. Sec. 2, Ch. 248, L. 1977; Sec. 84-7105, R.C.M. 1947; (2), (3)En. Sec. 420, Pol. C. 1895; re-en Sec. 170, Rev. C. 1907; re-en. Sec. 151, R.C.M. 1921; Cal. Pol. C. Sec. 433; re-en. Sec. 151, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974.; Sec. 79-101, R.C.M. 1947; R.C.M. 1947, 79-101(13), 84-7105; amd. Sec. 2, Ch. 160, L. 1985; amd. Sec. 1, Ch. 679, L. 1985; amd. Sec. 3, Ch. 419, L. 1989; amd. Sec. 28, Ch. 702, L. 1989; amd. Sec. 2, Ch. 429, L. 1993; amd. Sec. 15, Ch. 325, L. 1995; amd. Sec. 57, Ch. 546, L. 1995; amd. Secs. 4, 7, Ch. 589, L. 1995; amd. Sec. 1, Ch. 482, L. 1997; amd. Sec. 100, Ch. 552, L. 1997; amd. Sec. 2, Ch. 105, L. 1999.

Cross-References

Notice, 2-4-601.

Credits and refunds — period of limitations, 15-30-149.

Department of Revenue authorized to collect delinquent taxes by offset of tax refunds or wages, 15-30-310.

17-4-106. Agency owed debt to receive all money collected — exception. (1) All money collected by the department on debts transferred to the department by the various agencies, except funds collected under 17-4-103(3), must be deposited to the account or fund of the agency to which the debt was originally owed. A county shall apply a delinquent personal property tax collection by the department to the payment of the taxpayer's most delinquent personal property taxes or portion of the taxes.

(2) Funds collected under 17-4-103(3) must be deposited in an account in the internal service fund for the cost of assistance of debt collection by the department. Funds deposited in excess of the amount appropriated for operation of the debt collection program must be carried forward into the next fiscal year for operation of the debt collection program. Any excess carried forward into the next fiscal year must be used to reduce the designated percentage of the collected proceeds charged to the various agencies.

History: En. 84-7106 by Sec. 6, Ch. 118, L. 1974; amd. Sec. 3, Ch. 248, L. 1977; R.C.M. 1947, 84-7106; amd. Sec. 4, Ch. 419, L. 1989; amd. Sec. 2, Ch. 97, L. 1991; amd. Sec. 16, Ch. 325, L. 1995; amd. Secs. 5, 7, Ch. 589, L. 1995; amd. Sec. 2, Ch. 17, L. 1997.

17-4-107. Writeoff procedures. The department may establish procedures for canceling and writing off accounts receivable carried on the books of the various state agencies if the accounts have been transferred to the department pursuant to 17-4-104 and are uncollectible or if the continued pursuance of the collection of the accounts would cost the state more than the amount collected.

History: (1)En. 84-7107 by Sec. 7, Ch. 118, L. 1974; amd. Sec. 4, Ch. 248, L. 1977; Sec. 84-7107, R.C.M. 1947; (2)En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971; amd. Sec. 50. Ch. 326, L. 1974; Sec. 82-110, R.C.M. 1947; R.C.M. 1947, 82-110(3), 84-7107; amd. Sec. 5, Ch. 419, L. 1989; amd. Sec. 22, Ch. 112, L. 1991; amd. Sec. 19, Ch. 349, L. 1993; amd. Sec. 17, Ch. 325, L. 1995; amd. Sec. 3, Ch. 17, L. 1997; amd. Sec. 3, Ch. 347, L. 1997.

17-4-108. Circumstances under which previously written-off debt may be collected. If a debt previously written off under 17-4-107 subsequently becomes collectible, the department shall proceed to collect the money due pursuant to 17-4-105(1) and 17-4-106.

History: En. 84-7108 by Sec. 8, Ch. 118, L. 1974; R.C.M. 1947, 84-7108; amd. Sec. 6, Ch. 419, L. 1989; amd. Sec. 18, Ch. 325, L. 1995; amd. Sec. 4, Ch. 17, L. 1997; amd. Sec. 4, Ch. 347, L. 1997.

17-4-109. Debts not collectible under this part. This part does not apply to unliquidated debts and to debts owed to a state agency for which a procedure for compromise, release, discharge, waiver, cancellation or other form of settlement thereof for reasons other than uncollectibility is by law made specifically applicable to such state agency.

History: En. 84-7109 by Sec. 9, Ch. 118, L. 1974; R.C.M. 1947, 84-7109.

17-4-110. State agencies to adopt rules. All state agencies shall adopt rules and forms to participate in and carry out the provisions of this part.

History: En. 84-7110 by Sec. 10, Ch. 118, L. 1974; R.C.M. 1947, 84-7110.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

17-4-111. Right of hearing to aggrieved persons. A person aggrieved from a decision or an action taken under this part has the right to present the grievances in the same manner as provided by 17-4-105(4)(c) and subject to the contested case procedures of the Montana Administrative Procedure Act for taxpayer appeals.

History: En. 84-7111 by Sec. 11, Ch. 118, L. 1974; R.C.M. 1947, 84-7111; amd. Sec. 7, Ch. 419, L. 1989; amd. Sec. 3, Ch. 105, L. 1999.

Cross-References

Tax appeal procedure, Title 15, ch. 2, part 3.

CHAPTER 5

PUBLIC BOND ISSUES

Part 1 — Rates of Interest—Notice

17-5-101. Definitions.
17-5-102. Rate of interest on bonds to be determined by governing bodies.
17-5-103. Rate of interest on special assessments determined by governing bodies — limitations.
17-5-104. Effect of revisions on bonds previously authorized.
17-5-105. Redemption of bonds — optional method.
17-5-106. Notice of public bond sale.

Part 2 — Bond Validating Act

17-5-201. Short title.
17-5-202. Definitions.
17-5-203. Validation.
17-5-204. Period of application.
17-5-205. Application.

Part 3 — Refunding Bonds

17-5-301. Refunding bonds or debentures authorized — interest rate.
17-5-302. Character of bonds — amortization or serial.
17-5-303. Application of refunding bond law.
17-5-304. Cost and expense of refunding.
17-5-305. Sale of bonds and debentures.

Part 4 — Long-Range Building Program Bonds

17-5-401. Definitions.
17-5-402. Authority to issue long-range building program bonds.
17-5-403. Form, principal and interest, fiscal agent, and deposit of proceeds.
17-5-404. Use of capital projects fund.

17-5-405. Debt service account.
17-5-406. Use of debt service account.
17-5-407. Reservation of power to pledge taxes — redemption — refunding bonds.
17-5-408. Pledge of money to comply with principal, interest, and reserve requirements.
17-5-409. Waiver of security provisions.
17-5-410. Authorization of bonds.
17-5-411. Not codified.
17-5-412. Not codified.
17-5-413. Not codified.
17-5-414. Authorization of bonds.
17-5-415. Authorization for refunding bonds.
17-5-416. Not codified.
17-5-417. Not codified.
17-5-418 through 17-5-420 reserved.
17-5-421. Not codified.
17-5-422. Terminated.
17-5-423 through 17-5-426. Not codified.
17-5-427 through 17-5-429 reserved.
17-5-430. Authorization of bonds.
17-5-431. Not codified.
17-5-432. Not codified.
17-5-433. Not codified.

Part 5 — General Obligation Highway Bonds

17-5-501. Authority for general obligation highway bonds.
17-5-502. Site acquisition and construction authorized.
17-5-503. Amount authorized and reservation of future authorizations — payment.
17-5-504. Forms, interest, and maturity.
17-5-505. Board of examiners to prescribe form and employ fiscal agent.
17-5-506. Deposit and use of proceeds.
17-5-507. State pledge of gasoline tax — use.

Part 6 — Employment Security Building Bonds

17-5-601. Bond issue for employment security building addition on capitol grounds.
17-5-602. Architect and construction and design.
17-5-603. Bids and contractor's bond.
17-5-604. Amount of bonds authorized.
17-5-605. Interest rate, form, and other provisions of bonds.
17-5-606. Sale of bonds and registration.
17-5-607. Payment of principal and interest.
17-5-608. Employment security building account.
17-5-609. Purchase of bonds.
17-5-610. Budget Act not applicable.
17-5-611. Bond issue for employment security buildings throughout state.
17-5-612. Architect and construction and design.
17-5-613. Bids and contractor's bond.
17-5-614. Amount of bonds authorized.
17-5-615. Interest rate, term, and other provisions of bonds.
17-5-616. Sale of bonds and registration.
17-5-617. Payment of principal and interest.
17-5-618. Employment security building account.
17-5-619. Purchase of bonds.
17-5-620. Budget Act not applicable.

Part 7 — Coal Severance Tax Bonds—Water Development

17-5-701. State of Montana coal severance tax bonds.
17-5-702. Purpose and intent.
17-5-703. Coal severance tax trust funds.
17-5-704. Investment of funds.
17-5-705. Pledge of coal severance tax bond fund.
17-5-706. Authority to issue coal severance tax bonds.
17-5-707. Board of examiners to issue bonds.
17-5-708. Special fund revenues.
17-5-709. Continued tax deposit limit on additional bonds.
17-5-710. Form — principal and interest — fiscal agent — deposit of proceeds.
17-5-711. Trust indenture.
17-5-712. Provisions for protecting bondholders.
17-5-713. Personal liability — suit to compel performance.

17-5-714. Negotiability of bonds.
17-5-715. Signatures of board members.
17-5-716. Refunding obligations.
17-5-717. Pledge of the state.
17-5-718. Tax exemption of bonds — legal investments.
17-5-719. Limitation on amount of coal severance tax bonds issued.
17-5-720. Authorization to issue revenue bonds.
17-5-721. Authorization to issue revenue bonds.
17-5-722 through 17-5-730 reserved.
17-5-731. Bond anticipation notes — when issued — payment of principal and interest.

Part 8 — General Obligation Bonds and Notes

17-5-801. Definitions.
17-5-802. Authority to issue general obligation bonds and notes.
17-5-803. Form — principal and interest — fiscal agent — bond registrar and transfer agent — deposit of proceeds.
17-5-804. Use of capital projects account.
17-5-805. Bond anticipation notes — when issued — payment of principal and interest.
17-5-806. Repealed.

Part 9 — Highway Revenue Bonds

17-5-901. Short title.
17-5-902. Purpose.
17-5-903. Definitions.
17-5-904 through 17-5-910 reserved.
17-5-911. Highway revenue bond debt service account — deposit of bond proceeds.
17-5-912. Pledge of highway revenues.
17-5-913. Authority to issue highway revenue bonds.
17-5-914. Continuation of taxes — limit on additional highway revenue bonds.
17-5-915 through 17-5-920 reserved.
17-5-921. Bond anticipation notes — issued when — payment of principal and interest.
17-5-922. Form — principal and interest — fiscal agent — bonds authorized.
17-5-923. Trust indenture.
17-5-924. Provisions for protecting bondholders.
17-5-925. Personal liability — suit to compel performance.
17-5-926. Negotiability of bonds.
17-5-927. Signatures of board members.
17-5-928. Refunding obligations.
17-5-929. Pledge of the state.
17-5-930. Tax exemption of bonds — legal investments.

Part 10 — Actions

17-5-1001. Action to restrain bond issues.

Part 11 — Public Obligations Registration

17-5-1101. Short title.
17-5-1102. Definitions.
17-5-1103. Declarations of state interest — purposes.
17-5-1104. Construction.
17-5-1105. Applicability — election — rescission.
17-5-1106. Records — no public inspection — locations.
17-5-1107 through 17-5-1110 reserved.
17-5-1111. System of registration.
17-5-1112. Certificated public obligation — execution — authentication.
17-5-1113. Certificated public obligation — signatures.
17-5-1114. Certificated public obligation — seal.
17-5-1115. Uncertificated public obligation — signed statements.
17-5-1116 through 17-5-1120 reserved.
17-5-1121. Agents — depositories.
17-5-1122. Costs — collection.
17-5-1123. Deposits for security.

Part 12 — Allocation of State and Local Private Activity Bonds

(Repealed. Sec. 15, Ch. 190, L. 1987)

Part 13 — Montana Unified Volume Cap Bond Allocation Plan Act

17-5-1301. Short title.
17-5-1302. Definitions.
17-5-1303 through 17-5-1310 reserved.
17-5-1311. State's volume cap and reservations — department to adopt rule.
17-5-1312. Allocation to state issuers.
17-5-1313. Allocation to local issuers.
17-5-1314. Authorization by the governor.
17-5-1315. Carryforward elections.
17-5-1316. Allocations by the department.
17-5-1317. Notification of approval or disapproval by the department.
17-5-1318. Terms of allocations.
17-5-1319 and 17-5-1320 reserved.
17-5-1321. Allocations not transferable.
17-5-1322. Reapplication.
17-5-1323. Recordkeeping.
17-5-1324 reserved.
17-5-1325. Reassignment of bonding authority for agricultural purposes — contingency.

Part 14 reserved

Part 15 — Economic Development Bonds

17-5-1501. Short title.
17-5-1502. Legislative declaration.
17-5-1503. Definitions.
17-5-1504. Powers of the board.
17-5-1505. Financing programs of the board.
17-5-1506. Bonds and notes for projects and major projects.
17-5-1507. Bond anticipation notes — issuance — payment of principal and interest.
17-5-1508. Provisions of bond resolutions.
17-5-1509. Personal liability.
17-5-1510. Purchase of notes and bonds — cancellation.
17-5-1511. Trust indenture.
17-5-1512. Negotiability of bonds.
17-5-1513. Signatures of board members.
17-5-1514. Accounts.
17-5-1515. Reserve funds and appropriations.
17-5-1516. Maintenance of capital reserve account.
17-5-1517. Refunding obligations.
17-5-1518. Tax exemption of bonds.
17-5-1519. Repealed.
17-5-1520. Repealed.
17-5-1521. Adoption of rules.
17-5-1522. Pledge of the state.
17-5-1523. Credit of state not pledged.
17-5-1524. Taxation of projects.
17-5-1525. Bonds as legal investment.
17-5-1526. Procedure prior to financing projects.
17-5-1527. Procedure prior to financing major projects.
17-5-1528. Validity of pledge.
17-5-1529. Annual audits.

Part 16 — Municipal Finance Consolidation Act

17-5-1601. Short title.
17-5-1602. Policy and purpose.
17-5-1603. Liberal construction.
17-5-1604. Definitions.
17-5-1605. Board of investments to implement.
17-5-1606. Bonds, bond anticipation notes, and notes of the board.
17-5-1607. Participation voluntary.
17-5-1608. Limitations on amounts.
17-5-1609. Purchase of anticipation notes.
17-5-1610. Refunding obligations.
17-5-1611. Additional powers of the board.
17-5-1612 through 17-5-1620 reserved.
17-5-1621. Provisions of bond resolutions.
17-5-1622. Validity of pledge.

17-5-1623. Nonimpairment by state.
17-5-1624. Trust indenture.
17-5-1625. Presumption of validity.
17-5-1626. Signatures of board members.
17-5-1627. Negotiability of bonds or notes.
17-5-1628. Bonds or notes as legal investments.
17-5-1629. Tax exemption of bonds.
17-5-1630. Reserve fund.
17-5-1631. Additional funds and accounts.
17-5-1632 through 17-5-1640 reserved.
17-5-1641. Investment.
17-5-1642. Credit of state not pledged.
17-5-1643. Sale or exchange of securities.
17-5-1644. Care and custody of bonds purchased by the board.
17-5-1645. Insurance or guaranty.
17-5-1646. Default in payment.
17-5-1647. Powers and duties of trustee on default.
17-5-1648. Exemption from execution and sale.
17-5-1649. Annual audit.
17-5-1650. Annual report.
17-5-1651. Limitations on board's power.

Parts 17 through 19 reserved

Part 20 — Procurement of Vehicles and Equipment

17-5-2001. Loans to state agencies.

Part 21 — Crossover Refunding Bonds

17-5-2101. Definitions.
17-5-2102. Crossover refunding bonds authorized.

Part 22 — Bond Fees

17-5-2201. Fee for issuance of bonds.

Chapter Cross-References

Use of facsimile signatures on bonds, 2-16-114.
Municipality bond issue — annexation, 7-2-4731 through 7-2-4733.
County debt limits, 7-7-2101, 7-7-2102.
County finance — bonds and warrants, Title 7, ch. 7, part 22.
Municipal bonds and indebtedness, Title 7, ch. 7, part 42.
Municipal revenue bonds, Title 7, ch. 7, part 44.
Rural improvement district bonds, 7-12-2169 through 7-12-2173.
Special improvement district bonds, Title 7, ch. 12, part 42.
County water and sewer district bonds, 7-13-2321, 7-13-2322.
Television districts, 7-13-2510, 7-13-2511.
Bonds of city, 7-13-4203 through 7-13-4206.
Urban transportation districts, 7-14-235, 7-14-236.
County road and bridge bonds, Title 7, ch. 14, part 25.
Local improvement districts, 7-14-2702, 7-14-2745.
Municipality bond issue — bus lines, 7-14-4401, 7-14-4402.
Municipality bond issue — parking areas, 7-14-4501, 7-14-4502.
Parking Commission, Title 7, ch. 14, part 46.
Urban renewal, Title 7, ch. 15, parts 42 and 43.
Bonds of housing authority, 7-15-4501 through 7-15-4525.
City, town, and school district parks, 7-16-4104.
City bonds for public baths, 7-16-4111.
County bonds for smoke abatement, 7-31-106.
Public hospital districts, 7-34-2122, 7-34-2123.
County health care facility bonds authorized, 7-34-2411.
Ballots for bond issue elections, 13-17-306.
Classification of state bonds for tax, 15-6-204.
School district and county school bonds, Title 20, ch. 9, part 4.
Bonds issued by Regents, 20-25-402.
Investment in state bonds by savings banks, 32-1-421.
Investment in state bonds by trust and investment companies, 32-1-424.
Investment in state bonds by farm mutual insurers, 33-4-403.
Investment in state bonds by religious corporations, 35-3-205.

Municipal airports bonds, 67-10-203, 67-10-402.
Bonds of airport authorities, 67-11-303.
CERCLA bonds, 75-10-623.
Bonds for open space, 76-6-109.
Water conservation revenue bonds, 85-1-301.
Bonds of irrigation districts, Title 85, ch. 7, part 20.
Bonds of drainage districts, 85-8-501, 85-8-504, 85-8-702.
Bonds of conservancy districts, 85-9-621.
County and city bonds of industrial development project, 90-5-103, 90-5-104.

Part 1
Rates of Interest — Notice

17-5-101. Definitions. As used in this part, the following definitions apply:

(1) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness, evidencing or representing the borrowing of money, or evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(2) "Governing body" means the board, council, commission, or other body charged with the general control of the issuance of bonds of a political subdivision.

(3) (a) "Political subdivision" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other governmental subdivision of the state.

(b) The term does not include the state of Montana, the board of examiners, the department of natural resources and conservation, the state transportation commission, or any other board, agency, or commission of the state.

History: En. Sec. 1, Ch. 234, L. 1971; R.C.M. 1947, 79-2601; amd. Sec. 6, Ch. 75, L. 1995; amd. Sec. 46, Ch. 418, L. 1995.

17-5-102. Rate of interest on bonds to be determined by governing bodies. (1) Bonds of a political subdivision shall bear interest at such rate or rates as its governing body shall determine.

(2) The provisions of this section establish the rate of interest on bonds of political subdivisions as defined in 17-5-101 and expressly supersede any other statutory limitation on the rate of interest to be borne by bonds of political subdivisions.

History: En. Sec. 2, Ch. 234, L. 1971; R.C.M. 1947, 79-2602; amd. Sec. 10, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983.

17-5-103. Rate of interest on special assessments determined by governing bodies — limitations. All special assessments levied by a political subdivision shall bear interest at such rate or rates as its governing body shall determine, except that no such rate shall exceed the greater of 7% per annum or, in the event that the special assessments are appropriated for the payment of principal and interest on bonds issued by the political subdivision, the rate of interest on said bonds.

History: En. Sec. 3, Ch. 234, L. 1971; R.C.M. 1947, 79-2603.

17-5-104. Effect of revisions on bonds previously authorized. If prior to April 23, 1981, a political subdivision was authorized to issue bonds pursuant to a law that limited the rate of interest on the bonds, it may issue all of the bonds so authorized under the provisions of 17-5-102 even if the rate of interest on the bonds exceeds the maximum rate permissible prior to April 23, 1981.

History: En. Sec. 17, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983.

17-5-105. Redemption of bonds — optional method. Between April 23, 1981, and July 1, 1983, a governing body in connection with the issuance of bonds may, at its option, provide that such bonds shall be redeemable at such time or times and upon such terms and conditions as the governing body shall deem to be in the best interest of the public, notwithstanding any statutory provision to the contrary.

History: En. Sec. 18, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983.

17-5-106. Notice of public bond sale. Notwithstanding any other provision of state law relating to the publication of notice in advance of the sale of bonds, it is sufficient to publish the notice once a week for 2 consecutive weeks preceding the sale.

History: En. Sec. 1, Ch. 173, L. 1987.

Part 2
Bond Validating Act

17-5-201. Short title. This part may be cited as the "Bond Validating Act".

History: En. 79-2001 by Sec. 1, Ch. 265, L. 1975; amd. Sec. 1, Ch. 564, L. 1977; R.C.M. 1947, 79-2001.

17-5-202. Definitions. As used in this part, the following definitions apply:

(1) "Bonds" includes bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenues, income, or property of a public body, including all instruments or obligations payable from a special fund.

(2) "Public body" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state or any commission, authority, or agency of a political or governmental subdivision, and also includes the board of public education, the board of regents of higher education, the board of examiners, the department of natural resources and conservation, the state transportation commission, or any other governmental agency of this state.

History: En. 79-2002 by Sec. 2, Ch. 265, L. 1975; amd. Sec. 1, Ch. 486, L. 1975; amd. Sec. 2, Ch. 564, L. 1977; R.C.M. 1947, 79-2002; amd. Sec. 1, Ch. 282, L. 1981; amd. Sec. 6, Ch. 75, L. 1995; amd. Sec. 95, Ch. 42, L. 1997.

17-5-203. Validation. All bonds issued by any public body and all proceedings taken for the authorization and issuance of such bonds; for the levy, establishment, pledge, and appropriation of taxes, special assessments and other charges, and revenues to pay such bonds; and for the sale, exchange, execution, and delivery thereof, prior to the date set by and subject to the conditions set forth in 17-5-204, are validated, ratified, approved, and confirmed, notwithstanding any lack of power (other than constitutional) of such public body or the governing board or commission or officers thereof to authorize and issue such bonds or to sell, exchange, execute, or deliver the same and notwithstanding any defects or irregularities (other than constitutional) in such proceedings or in such sale, exchange, execution, or delivery, and bonds of such public bodies under the authority of such proceedings are binding, legal, valid, and enforceable obligations of such public body.

History: En. 79-2003 by Sec. 3, Ch. 265, L. 1975; amd. Sec. 3, Ch. 564, L. 1977; R.C.M. 1947, 79-2003.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Local government debt, Art. VIII, sec. 10, Mont. Const.

17-5-204. Period of application. (1) This part does not apply to or affect any action or appeal instituted on or before the date to which it has most recently been extended, in which the validity of any such proceeding or of any such bonds is at issue.

(2) The application of this part may be extended by act of the legislature to any date provided therein.

History: En. 79-2004 by Sec. 4, Ch. 265, L. 1975; amd. Sec. 2, Ch. 486, L. 1975; amd. Sec. 4, Ch. 564, L. 1977; R.C.M. 1947, 79-2004; amd. Sec. 1, Ch. 2, L. 1979.

17-5-205. Application. The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to February 9, 2001.

History: En. Sec. 5, Ch. 564, L. 1977; R.C.M. 1947, 79-2005; amd. Sec. 2, Ch. 2, L. 1979; amd. Sec. 2, Ch. 282, L. 1981; amd. Sec. 1, Ch. 576, L. 1983; amd. Sec. 1, Ch. 182, L. 1985; amd. Sec. 1, Ch. 89, L. 1987; amd. Sec. 1, Ch. 159, L. 1989; amd. Sec. 1, Ch. 187, L. 1991; amd. Sec. 1, Ch. 19, L. 1993; amd. Sec. 1, Ch. 190, L. 1995; amd. Sec. 1, Ch. 31, L. 1997; amd. Sec. 1, Ch. 9, L. 1999; amd. Sec. 1, Ch. 8, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 8 substituted "February 9, 2001" for "February 12, 1999". Amendment effective February 9, 2001.

Part 3
Refunding Bonds

Part Cross-References

Municipal refunding revenue bonds — option 1, Title 7, ch. 7, part 45.
The Revenue Bond Refinancing Act of 1937, Title 7, ch. 7, part 46.
Crossover refunding bonds — provisions, Title 17, ch. 5, part 21.

17-5-301. Refunding bonds or debentures authorized — interest rate. The board of examiners is hereby authorized and empowered to refund any issue of bonds, highway or other debentures heretofore issued by the state and which are outstanding or which may hereafter be issued by the state whenever in the judgment of such board it shall be deemed for the best interests of the state to do so. Refunding bonds or debentures shall not be issued in any greater amount than will be required to pay the principal and interest of the bonds or debentures to be refunded, costs of issuance, plus any defaulted interest thereon.

History: En. Sec. 1, Ch. 5, L. 1945; R.C.M. 1947, 79-1801; amd. Sec. 7, Ch. 184, L. 1983.

17-5-302. Character of bonds — amortization or serial. (1) All refunding bonds or debentures issued by the board of examiners under the provisions of this part shall be either amortization bonds, as defined by the statutes of the state, or serial bonds. Each issue of refunding bonds or debentures shall bear upon their face such statement as may be necessary to show that they are refunding bonds or debentures and the bonds or debentures which are issued to refund. Each bond and debenture shall bear the signature of each member of the board of examiners and shall have affixed thereto the great seal of the state of Montana. Each serial bond thereof shall have coupons attached thereto showing the semiannual payments due thereon, which coupons shall bear the signature of each member of the board of examiners.

(2) The board of examiners shall prescribe all other details for the form, notice, and time of sale of the bonds or debentures.

(3) They shall be registered in the office of the state treasurer in a book to be provided for that purpose.

History: En. Sec. 2, Ch. 5, L. 1945; amd. Sec. 11, Ch. 260, L. 1959; R.C.M. 1947, 79-1802.

Cross-References

Facsimile signatures and seals, 2-16-114.

17-5-303. Application of refunding bond law. All of the provisions of the act authorizing the issuance of the bonds or debentures which are to be refunded, insofar as the same relate to the issuance and sale, term and rate of interest, tax levies or funds for the payment and interest thereof, and time and manner of such payments, shall apply fully to such refunding bonds or debentures, except insofar as the same may be in conflict with the provisions of this part or with the provisions of any law authorizing particular refunding bonds.

History: En. Sec. 4, Ch. 5, L. 1945; R.C.M. 1947, 79-1804; amd. Sec. 8, Ch. 184, L. 1983.

17-5-304. Cost and expense of refunding. The board of examiners may require the purchaser to bear the cost and expense of refunding any issue of bonds or debentures in connection with the bid submitted, or the cost and expense may be paid out of the sinking and interest fund when there is money in such fund. The balance remaining in such sinking and interest fund shall be transferred in accordance with the provisions under which the refunded bonds were issued or as otherwise provided by law.

History: En. Sec. 5, Ch. 5, L. 1945; R.C.M. 1947, 79-1805; amd. Sec. 9, Ch. 184, L. 1983.

17-5-305. Sale of bonds and debentures. The refunding bonds or debentures which may be issued under the provisions of this part shall be sold by the board of examiners in such manner as they shall deem for the best interests of the state, provided that:

(1) none thereof shall be sold at less than its par value; and

(2) if the state shall hold any bonds or debentures to be refunded by any such issue of refunding bonds or debentures as investments of institutional or other funds, the same may be exchanged for the refunding bonds or debentures if such exchange be authorized by the proper state officers or board.

History: En. Sec. 3, Ch. 5, L. 1945; R.C.M. 1947, 79-1803; amd. Sec. 10, Ch. 184, L. 1983.

Part 4
Long-Range Building Program Bonds

Part Cross-References

Cigarette tax to retirement of long-range building bonds, 16-11-111.
Further long-range building bonds not to be issued under part, 17-5-802.
Long-range building program and budget, Title 17, ch. 7, part 2.
Liability of officers for failure to create debt service fund type for bond payment, 20-9-444.

17-5-401. Definitions. (1) "Board", "department", and "treasurer" mean the board of examiners, department of administration, and state treasurer, respectively.

(2) "Capital projects fund" means a separate long-range building program fund which is created within the capital projects fund type established in 17-2-102.

(3) "Costs" includes those expenses related to acquiring land; planning, design, and construction of capital projects and of buildings as defined in 18-2-101; or any other administrative expenses of the department, including legal fees, incurred in the performance of its duties under Title 18, chapter 2.

(4) "Debt service account" means a separate long-range building program fund which is created within the debt service fund type established in 17-2-102.

(5) "Long-range building program" means and includes all buildings, structures, and facilities to be constructed, repaired, used, equipped, or furnished and land to be acquired therefor with the consent of the legislature in accordance with 17-7-202 and 18-2-101 through 18-2-105.

(6) "Long-range building program bonds" means and includes all series of bonds issued to finance any portion of the long-range building program or to refund outstanding bonds, as authorized in this part.

History: En. Sec. 1, Ch. 276, L. 1965; amd. Sec. 1, Ch. 510, L. 1973; R.C.M. 1947, 79-2201(part); amd. Sec. 1, Ch. 298, L. 1983; amd. Sec. 1, Ch. 372, L. 1985.

Cross-References

Board of Examiners, 2-15-1007.

17-5-402. Authority to issue long-range building program bonds. (1) When authorized by the vote of two-thirds of the members of each house of the legislature or of a majority of the electors voting thereon, if so provided by law, and within the limits of such authorization and the further limitations in this section and 17-5-403, the board may issue and sell bonds of the state in such manner as it shall deem necessary and proper to provide funds to finance the long-range building program. Bonds may be issued hereunder to provide funds for the payment or redemption of long-range building program bonds issued under this section.

(2) The full faith and credit and taxing powers of the state shall be pledged for the payment of all bonds issued pursuant to this part after January 1, 1973, with all interest thereon and premiums payable upon the redemption thereof.

History: En. Sec. 2, Ch. 276, L. 1965; amd. Sec. 2, Ch. 318, L. 1967; amd. Sec. 1, Ch. 146, L. 1969; amd. Sec. 1, Ch. 222, L. 1971; amd. Sec. 2, Ch. 510, L. 1973; R.C.M. 1947, 79-2202(part).

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.
Facsimile signatures of public officials, 2-16-114.

17-5-403. Form, principal and interest, fiscal agent, and deposit of proceeds. (1) Each series of long-range building program bonds must be issued by the board upon request of the department, in denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest at the rate or rates, maturing at times not exceeding 30 years from date of issue, subject to redemption at earlier times and prices and upon notice, and payable at the office of the fiscal agency of the state as the board shall determine, subject to the limitations contained in 17-5-402 and this section.

(2) In the issuance of each series of bonds, the amount, maturities, and interest rates must be fixed in a manner that the maximum amount of principal and interest to become due in any subsequent fiscal year on all outstanding bonds and on the series to be issued will not exceed

50% of the average annual amount collected during the 3 preceding fiscal years from the taxes pledged by law to the debt service account at the time of issuance. This provision may not constitute a covenant of the state for the security of the bonds issued pursuant to this part after January 1, 1973, and the state reserves the right to amend this subsection in any manner after all bonds issued prior to that date and the interest on the bonds have been fully paid or the state's liability has been otherwise fully discharged.

(3) In all other respects, the board is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment. The bonds and any interest coupons appurtenant to the bonds must be signed by the members of the board, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all long-range building bonds issued and sold.

(4) The board may employ a fiscal agent to assist in the performance of its duties under this part.

(5) All proceeds of bonds issued under this part must be deposited in the capital projects fund, except that any premiums and accrued interest received must be deposited in the debt service account.

History: En. Sec. 2, Ch. 276, L. 1965; amd. Sec. 2, Ch. 318, L. 1967; amd. Sec. 1, Ch. 146, L. 1969; amd. Sec. 1, Ch. 222, L. 1971; amd. Sec. 2, Ch. 510, L. 1973; R.C.M. 1947, 79-2202(part); amd. Sec. 2, Ch. 298, L. 1983; amd. Sec. 20, Ch. 422, L. 1997.

Cross-References

Facsimile signatures of public officials, 2-16-114.

17-5-404. Use of capital projects fund. The capital projects fund must be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the long-range building program. The department may transfer from the capital projects fund to a special revenue fund the amount appropriated by the legislature from the special revenue fund for administrative expenses.

History: En. Sec. 1, Ch. 276, L. 1965; amd. Sec. 1, Ch. 510, L. 1973; R.C.M. 1947, 79-2201(part); amd. Sec. 3, Ch. 298, L. 1983; amd. Sec. 2, Ch. 372, L. 1985; amd. Sec. 17, Ch. 703, L. 1985; amd. Sec. 21, Ch. 422, L. 1997.

Cross-References

Board of Examiners, 2-15-1007.
Fund structure, 17-2-102.
Maintenance of fund and account records and interfund loans, 17-2-105.

17-5-405. Debt service account. (1) Money in the debt service account must be used:

(a) first, to pay interest and principal when due on long-range building program bonds;

(b) second, to accumulate a reserve in the amount required in subsection (1)(c), for the further security of the payments; and

(c) third, to maintain the reserve in an amount at least equal, after each interest and principal payment, to the maximum amount of interest and principal that will become due on all bonds that are outstanding in any subsequent fiscal year.

(2) Money at any time received in the debt service account in excess of the principal, interest, and reserve requirements stated in subsection (1) must be transferred by the treasurer to the general fund. If the balance at any time on hand in the debt service account is not sufficient for compliance with subsection (1), the treasurer shall credit to the debt service account an amount sufficient to restore the balance from the general fund.

History: En. Sec. 3, Ch. 276, L. 1965; amd. Sec. 3, Ch. 318, L. 1967; amd. Sec. 2, Ch. 222, L. 1971; amd. Sec. 3, Ch. 510, L. 1973; R.C.M. 1947, 79-2203(1) thru (3); amd. Sec. 4, Ch. 298, L. 1983; amd. Sec. 22, Ch. 422, L. 1997.

Cross-References

Fund structure, 17-2-102.
Amount authorized and reservation of future authorizations — payment, 17-5-503.
State pledge of gasoline tax — use, 17-5-507.

17-5-406. Use of debt service account. The debt service account shall be segregated by the treasurer from all other money in that or any other fund in the treasury and used only to pay long-range building program bonds and interest thereon when due so long as any such bonds or interest remain unpaid.

History: En. Sec. 1, Ch. 276, L. 1965; amd. Sec. 1, Ch. 510, L. 1973; R.C.M. 1947, 79-2201(part); amd. Sec. 5, Ch. 298, L. 1983.

Cross-References

Fund structure, 17-2-102.

17-5-407. Reservation of power to pledge taxes — redemption — refunding bonds. (1) The state reserves the power, by enactment of the legislature or the people, to levy, impose, and assess and to pledge and appropriate to the debt service account any tax specially designated therein or any specified amount or percentage of the collections of such special tax. The state also reserves the power to appropriate any funds designated by enactment of the legislature or the people for the redemption and prepayment of any long-range building program bonds or to authorize the issuance and sale of bonds for the purpose of refunding any such outstanding bonds or interest thereon, upon such terms and conditions as may be provided in said enactments and consistent with covenants and agreements made for the security of the outstanding bonds.

(2) Refunding bonds issued in advance of the maturity of the bonds refunded shall be issued only subject to the conditions stated in 17-5-403(2), substituting for this purpose the principal and interest requirements of the refunding bonds for those of the bonds refunded.

(3) Nothing herein shall prevent the board from issuing and selling refunding bonds, payable from the debt service account, to provide funds for payment of principal or interest due on long-range building program bonds when and if and to the extent that the debt service account is insufficient for this purpose.

History: En. Sec. 3, Ch. 276, L. 1965; amd. Sec. 3, Ch. 318, L. 1967; amd. Sec. 2, Ch. 222, L. 1971; amd. Sec. 3, Ch. 510, L. 1973; R.C.M. 1947, 79-2203(4); amd. Sec. 6, Ch. 298, L. 1983.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

17-5-408. Pledge of money to comply with principal, interest, and reserve requirements. (1) The state pledges and appropriates and directs to be credited as received to the debt service account money needed to comply with the principal and interest and reserve requirements stated in 17-5-405(1).

(2) The pledge made by this section is a first and prior charge upon all money received from the collection of taxes.

History: En. Sec. 3, Ch. 276, L. 1965; amd. Sec. 3, Ch. 318, L. 1967; amd. Sec. 2, Ch. 222, L. 1971; amd. Sec. 3, Ch. 510, L. 1973; R.C.M. 1947, 79-2203(5), (6); amd. Sec. 14, Ch. 634, L. 1979; amd. Sec. 4, Ch. 267, L. 1981; amd. Sec. 7, Ch. 298, L. 1983; amd. Sec. 3, Ch. 608, L. 1983; amd. Sec. 2, Ch. 450, L. 1985; amd. Sec. 3, Ch. 704, L. 1985; amd. Sec. 2, Ch. 666, L. 1987; amd. Sec. 4, Ch. 681, L. 1989; amd. Sec. 91, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 548, L. 1993; amd. Sec. 23, Ch. 422, L. 1997.

Cross-References

Disposition of cigarette taxes, 16-11-119.

17-5-409. Waiver of security provisions. If so stated in any series of bonds issued hereunder, the purchasers and holders thereof may by their purchase and retention of the same waive in whole or in part the security otherwise made available for such bonds by any provision of this part.

History: En. Sec. 4, Ch. 276, L. 1965; amd. Sec. 4, Ch. 510, L. 1973; R.C.M. 1947, 79-2204.

17-5-410. Authorization of bonds. The board is authorized to issue and sell long-range building program bonds in an amount not exceeding $31,550,505, over and above the amount of the long-range building program bonds outstanding January 1, 1981, upon the conditions and in the manner stated in this part. The board is also authorized to issue and sell long-range building program bonds in such amount as may be required to provide funds for the payment or redemption of outstanding bonds as contemplated in 17-5-402 and 17-5-407. The authority contained in this section is in addition to any other authorization to the board to issue long-range building program bonds.

History: En. Sec. 5, Ch. 276, L. 1965; amd. Sec. 4, Ch. 318, L. 1967; amd. Sec. 2, Ch. 146, L. 1969; amd. Sec. 3, Ch. 222, L. 1971; amd. Sec. 5, Ch. 510, L. 1973; R.C.M. 1947, 79-2205; amd. Sec. 1, Ch. 644, L. 1979; amd. Sec. 1, Ch. 604, L. 1981.

17-5-411. Not codified.
History: En. Sec. 2, Ch. 604, L. 1981; amd. Sec. 8, Ch. 298, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.

17-5-412. Not codified.
History: En. Sec. 3, Ch. 604, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 9, Ch. 298, L. 1983.

17-5-413. Not codified.
History: En. Sec. 4, Ch. 604, L. 1981.

17-5-414. Authorization of bonds. The board of examiners is authorized to issue and sell long-range building program bonds in an amount not exceeding $39,334,695, over and above the amount of long-range building program bonds outstanding January 1, 1983, to be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The board of examiners is also authorized to refund such bonds in accordance with Title 17, chapter 5, part 3, if it is deemed that such refunding would be in the best interest of the state. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell long-range building program bonds or refunding bonds.
History: En. Sec. 1, Ch. 643, L. 1983; amd. Sec. 5, Ch. 643, L. 1983.

17-5-415. Authorization for refunding bonds. The board of examiners is authorized to issue and sell refunding bonds in an amount necessary to refund any or all long-range building program bonds heretofore issued under Title 17, chapter 5, part 8. The refunding bonds are to be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 3. The refunding bonds shall be general obligations secured by a pledge of the full faith and credit and taxing powers of the state. Any money which may be released from the debt service account provided for in 17-5-405 as a result of the issuance of refunding bonds shall revert to the fund of origin to the extent not required to provide for the debt service on the refunded bonds. Money required for payment of debt service on the refunded bonds may be held in trust in a special escrow account at a bank or trust company for the benefit of the refunded bonds.
History: En. Sec. 2, Ch. 643, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 5, Ch. 643, L. 1983.

17-5-416. Not codified.
History: En. Sec. 3, Ch. 643, L. 1983; amd. Sec. 5, Ch. 643, L. 1983.

17-5-417. Not codified.
History: En. Sec. 4, Ch. 643, L. 1983.

17-5-418 through 17-5-420 reserved.

17-5-421. Not codified.
History: En. Sec. 1, Ch. 507, L. 1977; R.C.M. 1947, 78-1401(part); amd. Sec. 10, Ch. 298, L. 1983.

17-5-422. Terminated. Sec. 1, Ch. 33, Sp. L. June 1986.
History: En. Secs. 1, 2, Ch. 600, L. 1981; amd. Sec. 11, Ch. 298, L. 1983; amd. Sec. 1, Ch. 33, Sp. L. June 1986.

17-5-423 through 17-5-426. Not codified.
Compiler's Comments
Histories of Sections Not Codified:

17-5-423.	En. Sec. 8, HB 861, L. 1985; amd. Sec. 5, Ch. 224, L. 1989.
17-5-424.	En. Sec. 9, HB 861, L. 1985.
17-5-425.	En. Sec. 10, HB 861, L. 1985; amd. Sec. 5, Ch. 224, L. 1989.
17-5-426.	En. Sec. 11, HB 861, L. 1985.

17-5-427 through 17-5-429 reserved.

17-5-430. Authorization of bonds. The board of examiners is authorized to issue and sell general obligation long-range building program bonds in an amount not exceeding $6,460,000 for the projects described in section 9, Chapter 624, Laws of 1993, over and above the amount of general obligation long-range building program bonds outstanding on January 1, 1993, to be used in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation long-range building program bonds. The board may fund the projects authorized in section 9, Chapter 624, Laws of 1993, through the use of loans or bonds.

History: En. Sec. 10, Ch. 624, L. 1993; amd. Sec. 58, Ch. 546, L. 1995.

17-5-431. Not codified.

History: En. Sec. 11, Ch. 624, L. 1993.

17-5-432. Not codified.

History: En. Sec. 12, Ch. 624, L. 1993; amd. Sec. 59, Ch. 546, L. 1995.

17-5-433. Not codified.

History: En. Sec. 13, Ch. 624, L. 1993.

Part 5
General Obligation Highway Bonds

Part Cross-References

Establishing reserve for highway bonds, 60-3-201.

17-5-501. Authority for general obligation highway bonds. The board of examiners is authorized to issue and sell general obligation highway bonds of the state for the purpose of acquiring a suitable site for and erecting and equipping a department of transportation headquarters building and complex at or near Helena, Montana, to replace the present laboratory and administration buildings which are declared to be inadequate for such purpose. The full faith and credit and taxing powers of the state shall be pledged for the payment of all bonds issued pursuant to this part.

History: En. Sec. 1, Ch. 477, L. 1975; amd. Sec. 3, Ch. 512, L. 1991.

17-5-502. Site acquisition and construction authorized. Upon the sale of the bonds, the department of administration, acting under the supervision and with the approval of the board of examiners, is empowered and directed to acquire the site for and to proceed with the erection and equipping of a building of suitable construction and design for use as a headquarters building and necessary supporting structures for laboratories and storage for the Montana department of transportation.

History: En. Sec. 2, Ch. 477, L. 1975; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

17-5-503. Amount authorized and reservation of future authorizations — payment. The aggregate amount of highway bonds authorized by this part for the purpose expressed in 17-5-501 shall not exceed the sum of $7,400,000. The state reserves the privilege of issuing additional highway bonds, when and if authorized by law, for this purpose and for any other purpose for which money derived from the sources described in Article VIII, section 6, of the constitution is authorized by that section to be expended. The board of examiners is also authorized to issue additional highway bonds for the purpose of refunding bonds issued pursuant to or as contemplated in this chapter, in amounts not exceeding the principal amount of the bonds refunded, when the board determines that the refunding of any outstanding bonds is in the best interests of the state. All bonds issued for the purposes contemplated in this section shall be payable from the same debt service account on a parity as to both principal and interest with the bonds authorized in 17-5-501, provided that in the issuance of each series of such bonds the amount, maturities, and interest rates thereof shall be fixed in such manner that the maximum amount of principal and interest to become due in any subsequent fiscal year on such bonds then outstanding (except bonds refunded) and on the series so to be issued will not exceed 25% of the amount collected during the then next preceding fiscal year from the tax or taxes pledged by law to the debt service account at the time of such issuance. The provisions of this section shall not constitute a covenant with the holders of any bonds issued hereunder.

History: En. Sec. 3, Ch. 477, L. 1975; amd. Sec. 12, Ch. 298, L. 1983.

17-5-504. Forms, interest, and maturity. Such bonds shall be issued by the board, upon request of the department of administration, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest, maturing at such times not exceeding 20 years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of such fiscal agent of the state, as the board shall determine, subject to the limitations contained herein.

History: En. Sec. 4, Ch. 477, L. 1975.

17-5-505. Board of examiners to prescribe form and employ fiscal agent. In all other respects, the board is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment. The board is authorized to employ a fiscal agent to assist it in the performance of its duties hereunder. Such bonds and any interest coupons appurtenant thereto shall be signed by the members of the board of examiners, and the bonds shall be issued under the great seal of the state. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

History: En. Sec. 5, Ch. 477, L. 1975.

Cross-References

Facsimile signatures and seals, 2-16-114.

17-5-506. Deposit and use of proceeds. All proceeds of bonds issued hereunder shall be deposited in a separate highway capital projects fund which is created within the capital projects fund type established by 17-2-102, referred to herein as the "highway capital projects fund", and shall be segregated by the treasurer from all other money in that or any other fund in the state treasury. The proceeds of the bonds authorized in 17-5-501 shall be used only to pay costs of acquiring land for and erecting and equipping the buildings herein referred to, upon order of the department of administration acting within the limits of the authority conferred upon it by the legislature and said proceeds are appropriated for the purpose of the capital items herein described. The proceeds of any additional bonds authorized as contemplated in 17-5-503, except refunding bonds, shall be used only for purposes authorized under the provisions of Article VIII, section 6, of the constitution, upon order of the department acting within the limits of the authority conferred upon it by the legislature.

History: En. Sec. 6, Ch. 477, L. 1975; amd. Sec. 13, Ch. 298, L. 1983.

Cross-References

Use of clearance fund, 17-5-404.

17-5-507. State pledge of gasoline tax — use. (1) The state pledges and appropriates and directs to be credited as received to the debt service account, as herein defined, that portion of the net proceeds from the collection of gasoline taxes which may from time to time be needed to comply with the principal and interest and reserve requirements stated in subsection (2) of this section. The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received as net proceeds from the collection of gasoline taxation. The term "net proceeds", as used herein, means all funds on hand in the treasury of the state as of any date, derived from the collection of the license tax imposed on gasoline distributors by 15-70-204, enacted by section 3, Chapter 369, Laws of 1969, as amended by section 1, Chapter 202, and by section 2, Chapter 204, Laws of 1971, and by section 90, Chapter 516, Laws of 1973, or by any subsequent enactment, less the amount of all refunds of such taxes for which applications have been made pursuant to law but which have not yet been paid or rejected. The term "debt service account", as used herein, means a separate highway fund which is created within the debt service fund type established by 17-2-102 and shall be segregated by the treasurer from all other money in that or any other fund in the treasury and used only to pay highway bonds and interest thereon when due, so long as any such bonds or interest remain unpaid.

(2) Money in the debt service account shall be used: first, to pay interest and principal when due on highway bonds; second, to accumulate a reserve in the amount required below, for the further security of such payments; and third, to maintain this reserve in an amount at least equal, after each interest and principal payment, to the maximum amount of interest and

principal which will become due on all such bonds which are then outstanding in any subsequent fiscal year.

(3) Money at any time received in the debt service account in excess of the principal, interest, and reserve requirements stated in subsection (2) shall be transferred by the treasurer to the state special revenue fund, highway account. If the balance at any time on hand in the debt service account is not sufficient for compliance with subsection (2), the treasurer shall credit to said account an amount sufficient to restore said balance from the next receipts of net proceeds from the collection of gasoline taxes.

History: En. Sec. 7, Ch. 477, L. 1975; amd. Sec. 14, Ch. 298, L. 1983.

Cross-References

Distribution and use of proceeds of gasoline dealers' license tax, 60-3-201.

Part 6

Employment Security Building Bonds

17-5-601. Bond issue for employment security building addition on capitol grounds. The board of examiners is hereby authorized to issue and sell bonds for the purpose of constructing an addition to the employment security commission office building presently existing on the capitol building grounds adjacent to the capitol building, namely on lots 9 through 24, inclusive, in block 20 of the Corbin addition to the city of Helena, county of Lewis and Clark, Helena, Montana, and for the purpose of landscaping and paving around said building.

History: En. Sec. 1, Ch. 418, L. 1971; R.C.M. 1947, 78-1011.

17-5-602. Architect and construction and design. Upon the sale of the bonds, the board of examiners is hereby empowered and directed to employ an architect to prepare plans and specifications and to proceed with the constructing of an addition to the presently existing employment security commission building on the state capitol grounds, said addition to be used as office facilities by the employment security commission within the limitations prescribed by the United States department of labor, manpower administration, and the United States secretary of labor.

History: En. Sec. 2, Ch. 418, L. 1971; R.C.M. 1947, 78-1012.

17-5-603. Bids and contractor's bond. The board of examiners shall call for bids for the construction of and for the landscaping and paving around said addition to the employment security building and let contracts for the same, all in accordance with the laws of Montana. Said board shall require the contractor to give bond to the state in such amount as the board may determine, conditioned for the faithful performance of his duties and contract.

History: En. Sec. 3, Ch. 418, L. 1971; R.C.M. 1947, 78-1013.

17-5-604. Amount of bonds authorized. The aggregate amount of bonds authorized by 17-5-601 through 17-5-610 for the purpose of herein expressed shall not exceed the sum of $499,000.

History: En. Sec. 4, Ch. 418, L. 1971; R.C.M. 1947, 78-1014.

17-5-605. Interest rate, form, and other provisions of bonds. Bonds issued and sold by the board of examiners under authority of 17-5-601 through 17-5-610 shall bear interest at the current and prevailing interest rate, said interest to be payable semiannually. They shall be either amortization or serial bonds, shall bear such date as the board of examiners shall prescribe, and shall be payable over such period of years, not exceeding 20, as said board may specify. All bonds shall be optional and redeemable 5 years after the date of issue and on any interest payment date thereafter, at the option of the board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer. The coupons attached to said bonds may bear the facsimile signature of the members of said board.

History: En. Sec. 5, Ch. 418, L. 1971; R.C.M. 1947, 78-1015.

17-5-606. Sale of bonds and registration. Said bonds shall be sold by the board of examiners at such time, in such manner, and in such amounts as the board shall deem best to carry out the provisions of 17-5-601 through 17-5-610; provided that none of such bonds shall be sold for less than par plus accrued interest to the date of delivery of the bonds. Before delivery, each of said bonds shall be registered with the state treasurer, who shall keep accurate accounts of payments of interest and principal upon said bonds.

History: En. Sec. 6, Ch. 418, L. 1971; R.C.M. 1947, 78-1016.

17-5-607. Payment of principal and interest. (1) The principal and interest of the bonds authorized by 17-5-601 through 17-5-610 shall be payable out of the following funds and from them only:

(a) all money credited to this state's account in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the Social Security Act (42 U.S.C. 1103), as amended; and

(b) all money received from the United States secretary of labor and authorized for payment to provide office space for the central offices of the employment security commission at Helena, Montana.

(2) Immediately following use of said addition to said building upon completion of erection, pursuant to Title III of the Social Security Act, as amended, the money shall be and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by 17-5-601 through 17-5-610 to the extent said money may be sufficient to pay the same; provided said bonds shall be issued and sold by said board of examiners as herein provided only for the total sum or amount necessary to be raised in excess of such total of all balances or sums that may be accrued and available from said sources for erection of said building a total of $499,000.

History: En. Sec. 7, Ch. 418, L. 1971; R.C.M. 1947, 78-1017.

17-5-608. Employment security building account. To provide for the payment of the interest and principal of the bonds authorized by 17-5-601 through 17-5-610, there is created an employment security commission building account within a debt service fund in the state treasury. All sums of money dedicated and appropriated to the payment of the principal and interest of the bonds and the erection of the addition to the employment security building, including the landscaping and paving around it, shall be paid into that account.

History: En. Sec. 8, Ch. 418, L. 1971; amd. Sec. 1, Ch. 61, L. 1977; R.C.M. 1947, 78-1018; amd. Sec. 15, Ch. 298, L. 1983.

17-5-609. Purchase of bonds. The board of investments is authorized to purchase the bonds provided for by 17-5-601 through 17-5-610 with moneys from the investment funds.

History: En. Sec. 9, Ch. 418, L. 1971; amd. Sec. 2, Ch. 61, L. 1977; R.C.M. 1947, 78-1019; amd. Sec. 1, Ch. 418, L. 1985.

17-5-610. Budget Act not applicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the Budget Act.

History: En. Sec. 10, Ch. 418, L. 1971; R.C.M. 1947, 78-1020.

17-5-611. Bond issue for employment security buildings throughout state. The board of examiners is hereby authorized to issue and sell bonds for the purpose of purchasing land, landscaping, and paving said land as is necessary and for the purpose of erecting employment security commission office buildings in the following locations:

(1) employment security commission (employment service building), Great Falls, Montana;

(2) employment security commission (employment service building), addition, Billings, Montana;

(3) employment security commission (employment service building), Missoula, Montana;

(4) employment security commission (employment service building), Helena, Montana.

History: En. Sec. 1, Ch. 419, L. 1971; R.C.M. 1947, 78-1021.

17-5-612. Architect and construction and design. Upon the sale of the bonds, the board of examiners is hereby empowered and directed to employ architects to prepare plans and specifications and to proceed with the erection of buildings of suitable construction and design for use as employment security commission buildings within the limitations prescribed by the United States department of labor, manpower administration, and the United States secretary of labor.

History: En. Sec. 2, Ch. 419, L. 1971; R.C.M. 1947, 78-1022.

17-5-613. Bids and contractor's bond. The board of examiners shall call for bids for the construction of said buildings and for the landscaping and paving around them and let contracts for the same, all in accordance with the laws of Montana. Said board shall require each prime contractor to give bond to the state in such amount as the board may determine, conditioned for the faithful performance of his duties and contracts.

History: En. Sec. 3, Ch. 419, L. 1971; R.C.M. 1947, 78-1023.

17-5-614. Amount of bonds authorized. The aggregate amount of bonds authorized by 17-5-611 through 17-5-620 for the purpose herein expressed shall not exceed the sum of $1,055,928.

History: En. Sec. 4, Ch. 419, L. 1971; R.C.M. 1947, 78-1024.

17-5-615. Interest rate, term, and other provisions of bonds. Bonds issued and sold by the board of examiners under authority of 17-5-611 through 17-5-620 shall bear interest at the prevailing rate payable annually. They shall be either amortization or serial bonds, shall bear such date as the board of examiners shall prescribe, and shall be payable over such period of years, not exceeding 20, as said board may specify. All bonds shall be optional and redeemable 5 years after the date of issue and on any interest payment date thereafter at the option of the board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer.

History: En. Sec. 5, Ch. 419, L. 1971; R.C.M. 1947, 78-1025.

17-5-616. Sale of bonds and registration. Said bonds shall be sold by the board of examiners at such time, in such manner, and in such amounts as the board shall deem best to carry out the provisions of 17-5-611 through 17-5-620; provided that none of such bonds shall be sold for less than par plus accrued interest to the date of delivery of the bonds. Before delivery, each of said bonds shall be registered with the state treasurer, who shall keep accurate accounts of payments of interest and principal upon said bonds.

History: En. Sec. 6, Ch. 419, L. 1971; R.C.M. 1947, 78-1026.

17-5-617. Payment of principal and interest. (1) The principal and interest of the bonds authorized by 17-5-611 through 17-5-620 shall be payable out of the following funds and from them only:

(a) all money credited to this state's account in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the Social Security Act (42 U.S.C. 1103), as amended; and

(b) all money received from the United States secretary of labor and authorized for payment to provide office space for the central offices of the employment security commission at Helena, Montana.

(2) Immediately following occupancy of said buildings upon completion of erection, pursuant to Title III of the Social Security Act, as amended, the money shall be and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by 17-5-611 through 17-5-620 to the extent said money may be sufficient to pay the same; provided said bonds shall be issued and sold by said board of examiners as herein provided only for the total sum or amount necessary to be raised in excess of such total of all balances or sums that may be accrued and available from said sources for erection of said building a total of $1,055,928.

History: En. Sec. 7, Ch. 419, L. 1971; R.C.M. 1947, 78-1027.

17-5-618. Employment security building account. To provide for the payment of the interest and principal of the bonds authorized by 17-5-611 through 17-5-620, there is created an employment security commission building account within the debt service fund type in the state treasury. All sums of money dedicated and appropriated to the payment of the principal and interest of the bonds and the erection of the buildings, including the landscaping and paving around them, shall be paid into that account.

History: En. Sec. 8, Ch. 419, L. 1971; amd. Sec. 3, Ch. 61, L. 1977; R.C.M. 1947, 78-1028; amd. Sec. 16, Ch. 298, L. 1983.

17-5-619. Purchase of bonds. The board of investments is authorized to purchase the bonds provided for by 17-5-611 through 17-5-620 with moneys from the investment funds.

History: En. Sec. 9, Ch. 419, L. 1971; amd. Sec. 4, Ch. 61, L. 1977; R.C.M. 1947, 78-1029; amd. Sec. 2, Ch. 418, L. 1985.

17-5-620. Budget Act not applicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the Budget Act.

History: En. Sec. 10, Ch. 419, L. 1971; R.C.M. 1947, 78-1030.

Part 7

Coal Severance Tax Bonds — Water Development

Part Cross-References

Inalienable rights, Art. II, sec. 3, Mont. Const.
Protection and improvement of environment, Art. IX, sec. 1, Mont. Const.
Severance tax on coal — trust fund, Art. IX, sec. 5, Mont. Const.
Coal severance tax — general provisions, Title 15, ch. 35, part 1.
Water resources — administration, Title 85, ch. 1, part 2.
Renewable resource grant and loan program, Title 85, ch. 1, part 6.
Dams and reservoirs, Title 85, ch. 15.
Coal impacts — general provisions, Title 90, ch. 6, part 2.

17-5-701. State of Montana coal severance tax bonds. This part provides for the issuance of state of Montana coal severance tax bonds (also referred to as coal severance tax bonds in this part) to:

(1) finance renewable resource projects in the state designed to provide, during and after extensive coal mining, a healthy economy, the alleviation of social and economic impacts created by coal development, and a clean and healthful environment for present and future generations; and

(2) finance loans to local governments for infrastructure projects under Title 90, chapter 6, part 7.

History: En. Sec. 24, Ch. 505, L. 1981; amd. Sec. 3, Ch. 3, Sp. L. January 1992; amd. Sec. 5, Ch. 478, L. 1993.

17-5-702. Purpose and intent. (1) The purpose of the coal severance tax trust fund bond provisions of this part is to establish the authority to issue and sell coal severance tax bonds that have been approved by act of the legislature for financing specific renewable resource projects in the state authorized by the legislature and to guarantee redemption of the bonds by revenue derived from the receipts from the coal severance tax imposed by Title 15, chapter 35, part 1, and such other money as the legislature may from time to time determine.

(2) The legislature intends that projects to be financed by coal severance tax bonds include renewable resource projects as part of the program established in Title 85, chapter 1, part 6. The legislature further intends that the income from renewable resource projects in excess of the amount required for debt service and operation and maintenance of those projects and activities be deposited in the renewable resource grant and loan program state special revenue account established in 85-1-604.

History: En. Sec. 25, Ch. 505, L. 1981; amd. Sec. 17, Ch. 298, L. 1983; amd. Sec. 6, Ch. 478, L. 1993.

17-5-703. *(Temporary)* **Coal severance tax trust funds.** (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a treasure state endowment regional water system fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund; and

(f) a coal severance tax school bond contingency loan fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (5).

(3) (a) On January 21, 1992, and continuing as long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) (a) Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall quarterly transfer to the treasure state endowment fund 75% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) Beginning July 1, 1999, and ending June 30, 2013, the state treasurer shall quarterly transfer to the treasure state endowment regional water system fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(c) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(d) The state treasurer shall monthly transfer from the treasure state endowment regional water system fund to the treasure state endowment regional water system special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account for regional water systems authorized under 90-6-715. Earnings not transferred to the treasure state endowment regional water system special revenue account must be retained in the treasure state endowment regional water system fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund.

17-5-703. *(Effective July 1, 2003)* **Coal severance tax trust funds.** (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a treasure state endowment regional water system fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund; and

(f) a coal severance tax school bond contingency loan fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (5).

(3) (a) As long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b)

transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) (a) Until June 30, 2013, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) Until June 30, 2013, the state treasurer shall quarterly transfer to the treasure state endowment regional water system fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(c) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(d) The state treasurer shall monthly transfer from the treasure state endowment regional water system fund to the treasure state endowment regional water system special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account for regional water systems authorized under 90-6-715. Earnings not transferred to the treasure state endowment regional water system special revenue account must be retained in the treasure state endowment regional water system fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund. *(Terminates June 30, 2016—sec. 1, Ch. 70, L. 2001.)*

17-5-703. *(Effective July 1, 2016)* **Coal severance tax trust funds.** (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a coal severance tax permanent fund;

(d) a coal severance tax income fund; and

(e) a coal severance tax school bond contingency loan fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (5).

(3) (a) As long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) (a) Until June 30, 2013, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund.

History: En. Sec. 26, Ch. 505, L. 1981; amd. Sec. 18, Ch. 298, L. 1983; amd. Sec. 2, Ch. 512, L. 1985; amd. Sec. 3, Ch. 722, L. 1991; amd. Secs. 3, 7, Ch. 12, Sp. L. January 1992; amd. Sec. 4, Ch. 515, L. 1993; amd. Sec. 1, Ch. 8, Sp. L. November 1993; amd. Sec. 1, Ch. 33, Sp. L. November 1993; amd. Secs. 1, 4, Ch. 495, L. 1999; amd. Sec. 3, Ch. 61, L. 2001; amd. Sec. 1, Ch. 380, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 61 in temporary version and in version effective July 1, 2003, in (4)(c) and (4)(d) in first sentence inserted "excluding unrealized gains and losses"; and in version effective July 1, 2016, in (4)(b) in first sentence inserted "excluding unrealized gains and losses". Amendment effective March 16, 2001.

(Version effective July 1, 2003) Chapter 380 at beginning of (3)(a) deleted "On January 21, 1992, and continuing"; at beginning of (4)(a) substituted "Until" for "Beginning July 1, 1993, and ending" and near middle after "endowment fund" substituted "50%" for "75%"; at beginning of (4)(b) substituted "Until" for "Beginning July 1, 1999, and ending"; and made minor changes in style.

(Version effective July 1, 2016) At beginning of (3)(a) deleted "On January 21, 1992, and continuing"; at beginning of (4)(a) substituted "Until" for "Beginning July 1, 1993, and ending"; and made minor changes in style.

Extension of Termination Date: Section 1, Ch. 70, L. 2001, amended sec. 6, Ch. 495, L. 1999, by extending the termination date imposed by Ch. 495 to June 30, 2016. Effective June 30, 2013.

Cross-References

Montana in-state investment, Title 17, ch. 6, part 3.

17-5-704. Investment of funds. Money in the coal severance tax bond fund, the coal severance tax permanent fund, the coal severance tax income fund, and the coal severance tax school bond contingency loan fund must be invested in accordance with the investment standards for coal severance tax funds. Income and earnings, excluding unrealized gains and losses, from all funds must be deposited in the state general fund.

History: En. Sec. 27, Ch. 505, L. 1981; amd. Sec. 1, Ch. 149, L. 1983; amd. Sec. 19, Ch. 298, L. 1983; amd. Sec. 2, Ch. 662, L. 1987; amd. Sec. 23, Ch. 83, L. 1989; amd. Sec. 3, Ch. 634, L. 1989; amd. Sec. 92, Ch. 11, Sp. L. June 1989; amd. Sec. 4, Ch. 787, L. 1991; amd. Sec. 4, Ch. 12, Sp. L. January 1992; amd. Sec. 3, Ch. 442, L. 1995; amd. Sec. 22, Ch. 509, L. 1995; amd. Sec. 4, Ch. 61, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 61 in second sentence inserted "excluding unrealized gains and losses". Amendment effective March 16, 2001.

17-5-705. Pledge of coal severance tax bond fund. The money in the coal severance tax bond fund is pledged to the payment of the principal and interest on all state of Montana coal severance tax bonds. All bonds issued after July 1, 1981, wherein the money in the coal severance tax bond fund is pledged for their retirement shall be called "state of Montana coal severance tax bonds".

History: En. Sec. 28, Ch. 505, L. 1981; amd. Sec. 20, Ch. 298, L. 1983.

17-5-706. Authority to issue coal severance tax bonds. The board of examiners, upon approval of the legislature as hereinafter provided, shall issue and sell coal severance tax bonds to finance approved renewable resource projects when authorized to do so by any law that sets out the amount and purpose of the issue. Each project must be separately approved as to amount by a two-thirds vote of each house of the legislature.

History: En. Sec. 29, Ch. 505, L. 1981; amd. Sec. 7, Ch. 478, L. 1993.

Cross-References

Bond anticipation notes authorized, 17-5-731.

The Montana Unified Volume Cap Bond Allocation Plan Act, Title 17, ch. 5, part 13.

17-5-707. Board of examiners to issue bonds. The board of examiners may issue and sell coal severance tax bonds, and no other agency of the state is so authorized. Any action taken by the board of examiners under this part must be approved by a majority vote of its members.

History: En. Sec. 30, Ch. 505, L. 1981.

17-5-708. Special fund revenues. (1) If a law authorizing a coal severance tax bond issue for a specific purpose and in a specific amount contemplates the pledge and receipt of revenues, assets, or money other than or in addition to the money in the coal severance tax bond fund, then the money derived from such pledged revenues, assets, and money must be paid into a special bond fund for the benefit of such bonds, which must be part of a debt service fund of the state treasury fund structure.

(2) Money must be withdrawn from the coal severance tax bond fund and paid to the special bond fund as necessary to provide for payment of principal and interest on the coal severance tax bonds secured by a pledge of the special bond fund.

History: En. Sec. 31, Ch. 505, L. 1981; amd. Sec. 21, Ch. 298, L. 1983.

Cross-References

Fund structure, 17-2-102.

17-5-709. Continued tax deposit limit on additional bonds. (1) The legislature shall provide for the continued assessment, levy, collection, and deposit into the coal severance tax bond fund of the coal severance tax that, together with other revenue, assets, and money that may be deposited to one or more special bond funds pledged for the benefit of coal severance tax bonds, will be sufficient to produce an amount that is at least the amount necessary to pay, when due, the annual debt service charges on all outstanding coal severance tax bonds.

(2) The board of examiners may issue no coal severance tax bonds unless the aggregate amount of coal severance tax bonds outstanding, including the proposed issue and any other coal severance tax bonds authorized but not yet issued, can be serviced with no more than two-thirds of the annual deposits into the coal severance tax bond fund, as determined by the average of the deposits during the preceding 3 fiscal years, together with the average of the aggregate amount of revenue, assets, or money deposited in one or more special bond funds used to pay debt service on outstanding coal severance tax bonds during the preceding 3 fiscal years.

(3) The provisions of this section may not be modified so as to reduce the security for any coal severance tax bonds while the bonds are outstanding.

History: En. Sec. 32, Ch. 505, L. 1981; amd. Sec. 22, Ch. 298, L. 1983; amd. Sec. 5, Ch. 563, L. 1999; amd. Sec. 28, Ch. 7, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 7 deleted former (1)(b) that read: "(b) The legislature shall provide for the continued assessment, levy, collection, and deposit into the coal producer's license tax bond account established in 90-3-1004 of the coal producer's license taxes that, together with other revenue, assets, and money that may be deposited to one or more special bond funds pledged for the benefit of coal severance tax bonds, will be sufficient to produce an amount that when combined with the deposits in subsection (1)(a) is at least the amount necessary to pay, when due, the annual debt service charges on all outstanding coal severance tax bonds"; near middle of (2) after "coal severance tax bond fund" deleted "and coal producer's license tax bond account established in 90-3-1004"; and made minor changes in style. Amendment effective October 1, 2001.

17-5-710. Form — principal and interest — fiscal agent — deposit of proceeds. (1) Each series of coal severance tax bonds must be issued by the board of examiners at public or private sale, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at such rate or rates, maturing at such times not exceeding 40 years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of such fiscal agency of the state as the board of examiners shall determine, subject to the limitations contained in this part.

(2) In all other respects the board of examiners is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(3) Coal severance tax bonds and any interest coupons appurtenant thereto shall be signed by the members of the board of examiners, and the bonds shall be issued under the great seal of

the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(4) The board of examiners is authorized to employ a fiscal agent to assist in the performance of its duties hereunder.

(5) All proceeds of a state of Montana coal severance tax bonds issue shall be deposited in a capital projects fund or a state special revenue account established for that bond issue, except that any premiums and accrued interest received shall be deposited in a debt service fund established for that bond issue.

History: En. Sec. 33, Ch. 505, L. 1981; amd. Sec. 23, Ch. 298, L. 1983.

Cross-References

Facsimile signatures and seals, 2-16-114.
Fund structure, 17-2-102.

17-5-711. Trust indenture. In the discretion of the board of examiners, a series of bonds or notes issued under this part may be secured by a trust indenture by and between the board of examiners and a trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Each trust indenture or an executed counterpart thereof shall be filed in the office of the secretary of state of Montana. The filing of a trust indenture or an executed counterpart thereof in the office of the county clerk of the county in which the property covered by the trust indenture is located is constructive notice of its contents to all persons from the time of the filing, and the recording of the trust indenture or its contents is not necessary.

History: En. Sec. 34, Ch. 505, L. 1981; amd. Sec. 3, Ch. 512, L. 1985.

Cross-References

Duties of Secretary of State, 2-15-401.
Role and duties of County Clerk, 7-4-2611.
Procedure to record documents, 7-4-2617.
Trust company defined — purposes for which may be formed, 32-1-107.

17-5-712. Provisions for protecting bondholders. Either the legislative act providing for the issuance of coal severance tax bonds or the trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the state, the board of examiners, and the departments, boards, or agencies of state government in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the projects financed with the proceeds of coal severance tax bonds and the custody, safeguarding, and application of all money. The trust indenture may set forth the rights and remedies of the bondholders as is customary in trust indentures, deeds of trusts, and mortgages securing bonds or debentures of corporations. No enumeration of particular powers granted by this section impairs any general grant of power contained in this part.

History: En. Sec. 35, Ch. 505, L. 1981.

17-5-713. Personal liability — suit to compel performance. (1) The members of the board of examiners and officers and employees of the departments, boards, or agencies of state government are not personally liable or accountable by reason of the issuance of or on any coal severance tax bond or bond anticipation note issued by the board of examiners.

(2) Any holder of coal severance tax bonds or any person or officer being a party in interest, subject to any applicable coal severance tax agreements or trust indentures, may sue to enforce and compel the performance of the coal severance tax bond provisions as set out in this part.

History: En. Sec. 36, Ch. 505, L. 1981; amd. Sec. 4, Ch. 512, L. 1985.

Cross-References

Bonds of state officers and employees, Title 2, ch. 9, part 6.
Bond anticipation notes authorized, 17-5-731.

17-5-714. Negotiability of bonds. Bonds or notes issued under this part are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of bonds.

History: En. Sec. 37, Ch. 505, L. 1981; amd. Sec. 5, Ch. 512, L. 1985.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

17-5-715. Signatures of board members. In case any member of the board of examiners whose signature appears on bonds, notes, or coupons issued under this part ceases to be a member before the delivery of the bonds or notes, his signature is nevertheless valid and sufficient for all purposes, the same as if the member had remained in office until delivery.

History: En. Sec. 38, Ch. 505, L. 1981; amd. Sec. 6, Ch. 512, L. 1985.

17-5-716. Refunding obligations. (1) The state board of examiners may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under this part, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the obligations. The issuance of refunding obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the state are governed by the appropriate provisions of this part that relate to the issuance of obligations.

(2) Refunding obligations issued as provided in subsection (1) may be sold or exchanged for outstanding obligations issued under this part. The proceeds may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations, with other available funds, to the payment of principal, accrued interest, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested as provided in Title 17, chapter 6.

History: En. Sec. 39, Ch. 505, L. 1981.

Cross-References

Crossover refunding bonds, Title 17, ch. 5, part 21.

17-5-717. Pledge of the state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the state and the holders of notes and bonds issued by the state.

History: En. Sec. 40, Ch. 505, L. 1981.

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

17-5-718. Tax exemption of bonds — legal investments. (1) All bonds or notes issued under this part, their transfer, and their income, including any profits made on their sale, are exempt from taxation by the state or any political subdivision or other instrumentality of the state, except for estate taxes.

(2) Bonds or notes issued under this part are legal investments for any person or board charged with investment of public funds and are acceptable as security for any deposit of public money.

History: En. Sec. 41, Ch. 505, L. 1981; amd. Sec. 7, Ch. 512, L. 1985; amd. Sec. 9, Ch. 9, Sp. L. May 2000.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 at end of (1) deleted references to inheritance taxes and gift taxes; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

Cross-References

Investments, Title 17, ch. 6, part 2.

17-5-719. Limitation on amount of coal severance tax bonds issued. No more than $250 million worth of coal severance tax bonds may be issued for renewable resource development projects and activities.

History: En. Sec. 42, Ch. 505, L. 1981.

17-5-720. Authorization to issue revenue bonds. (1) In addition to the authority contained in 17-5-716, the board of examiners may issue revenue bonds of the state to refund in whole or in part bonds issued to finance renewable resource development projects approved by the legislature pursuant to Title 17, chapter 5, part 7, and Title 85, chapter 1, part 6. The principal and interest on refunding bonds issued pursuant to this section are payable solely from the project or projects for which the refunded bonds were issued.

(2) The revenue bonds may be issued in an amount sufficient to refund all or a portion of the outstanding bonds, to pay costs incident to the issuance and sale of the refunding bonds, and to fund the establishment of necessary reserves. The refunding bonds must be designated as "State of Montana Water Development Revenue Bonds". All the power and authority granted to the board of examiners and provisions with respect to the issuance of bonds under Title 17, chapter 5, part 7, except for the provision pledging the coal severance tax to the payment of the bonds, apply to the issuance of the revenue bonds. In authorizing the issuance of the revenue bonds, the board of examiners shall determine that the refunding of the outstanding bonds and the issuance of the revenue bonds are in the best interest of the state.

(3) Revenue bonds may not be issued under this section to refund bonds issued to fund a loan to a political subdivision or local government body unless the political subdivision or local government body whose loan repayments would be pledged to the payment of the refunding bonds has consented to the refunding.

(4) Revenue bonds issued pursuant to this section without the pledge of the coal severance tax to the payment of the bonds are not coal severance tax bonds or a state debt.

History: En. Sec. 8, Ch. 775, L. 1991.

17-5-721. Authorization to issue revenue bonds. (1) In addition to the authority contained in 17-5-716, the board of examiners may issue revenue bonds of the state to refund, in whole or in part, bonds issued to finance renewable resource projects approved by the legislature pursuant to Title 17, chapter 5, part 7, and Title 85, chapter 1, part 6. The principal and interest on refunding bonds issued pursuant to this section are payable solely from the project or projects for which the refunded bonds were issued.

(2) The revenue bonds may be issued in an amount sufficient to refund all or a portion of the outstanding bonds, to pay costs incident to the issuance and sale of the refunding bonds, and to fund the establishment of necessary reserves. The refunding bonds must be designated as "State of Montana Water Development Revenue Bonds". All the power and authority granted to the board of examiners and provisions with respect to the issuance of bonds under Title 17, chapter 5, part 7, except for the provision pledging the coal severance tax to the payment of the bonds, apply to the issuance of the revenue bonds. In authorizing the issuance of the revenue bonds, the board of examiners shall determine that the refunding of the outstanding bonds and the issuance of the revenue bonds are in the best interests of the state.

(3) Revenue bonds may not be issued under this section to refund bonds issued to fund a loan to a political subdivision or local government body unless the political subdivision or local government body whose loan repayments would be pledged to the payment of the refunding bonds has consented to the refunding.

(4) Revenue bonds issued pursuant to this section without the pledge of the coal severance tax to the payment of the bonds are not coal severance tax bonds or a state debt.

History: En. Sec. 9, Ch. 497, L. 1993.

17-5-722 through 17-5-730 reserved.

17-5-731. Bond anticipation notes — when issued — payment of principal and interest. (1) When the board of examiners has been authorized by the legislature to issue and sell bonds under this part, it may, pending the issuance of the bonds, issue temporary notes in anticipation of the receipt of proceeds to be derived from the sale of the bonds. The notes are designated as "bond anticipation notes". The proceeds of the sale of the bond anticipation notes must be used only for the purposes for which the proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds in anticipation of which the original notes were issued. As much of the proceeds of the bonds, when issued, must be credited to the note debt service fund as may be needed for payment of the notes, with interest, when due.

(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 3 years after the date of issue may be issued from time to time as needed. Notes must be authorized by the board of examiners and contain such terms and details as may be provided by resolution of the board. Each resolution of the board of examiners authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify:

(i) the principal amount of the notes or maximum principal amount of the notes that may be outstanding at any time;

(ii) the rate or rates of interest, the maximum rate of interest, or the interest rate formula (to be determined in the manner specified in the resolution authorizing the notes) of such notes; and

(iii) the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for notes to be issued and sold, in whole or in part, from time to time. The board may delegate to the state treasurer the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of interest, and such other terms and details of the notes as may be considered appropriate by the board or, if there has been such a delegation, the state treasurer. The board may, in its discretion but subject to the limitations contained in this section, also provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either within or outside of the state, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes, from time to time, without further action by the board, unless the board revokes such authority to refund; and

(d) such other terms and conditions as the board may consider appropriate.

(4) In connection with the issuance and sale of notes, the board may arrange for lines of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on such lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing such terms and conditions as the board may authorize in the resolution approving them.

History: En. Sec. 8, Ch. 512, L. 1985.

Cross-References

Negotiability of bonds, 17-5-714.

Part 8

General Obligation Bonds and Notes

Part Cross-References

Long-range building program and budget, Title 17, ch. 7, part 2.

17-5-801. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of examiners provided for in 2-15-1007.

(2) "Bond act" means an act approved by the vote of two-thirds of the members of each house of the legislature or by a majority of the electors voting thereon, authorizing the issuance of bonds for the purpose set forth therein and adopting this part by reference.

(3) "Bonds" means general obligation bonds, notes, or other evidences of indebtedness issued in accordance with the provisions of this part.

(4) "Capital projects account" means a separate general obligation bond and note account created within the capital projects fund type established in 17-2-102.

(5) "Costs" includes those expenses related to acquiring land; planning, design, and construction of capital projects and of buildings as defined in 18-2-101; or any other administrative expenses of the department, including legal fees, incurred in the performance of its duties under Title 18, chapter 2.

(6) "Debt service account" means a separate general obligation bond and note account created within the debt service fund type established in 17-2-102.

(7) "Department" means the department of administration created in 2-15-1001.

(8) "Treasurer" means the ex officio state treasurer, referred to in 2-15-1002.

History: En. Sec. 1, Ch. 184, L. 1983; amd. Sec. 3, Ch. 372, L. 1985.

17-5-802. Authority to issue general obligation bonds and notes. (1) When authorized by and within the limits of a bond act and as provided in this part, the board may issue and sell bonds of the state in such manner as it considers necessary and proper to provide funds for the purpose set forth in the bond act.

(2) The full faith and credit and taxing powers of the state must be pledged for the payment of all bonds and notes issued pursuant to this part, with all interest thereon and premiums payable upon the redemption thereof. All principal, interest, and redemption premium, if any, becoming due during a fiscal year must be included in the state budget for such year, and sufficient revenues must be appropriated for payment thereof from the general fund and, if the general fund is not sufficient, from any other funds of the state legally available for payment thereof. No bonds may be issued to cover deficits incurred because appropriations exceeded anticipated revenue. Money transferred for the payment of bonds and notes must be deposited in the debt service account.

(3) No additional long-range building bonds may be issued under Title 17, chapter 5, part 4.

History: En. Sec. 2, Ch. 184, L. 1983.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.
Balanced budget, Art. VIII, sec. 9, Mont. Const.
Use of loan proceeds, Art. VIII, sec. 11, Mont. Const.

17-5-803. Form — principal and interest — fiscal agent — bond registrar and transfer agent — deposit of proceeds. (1) In furtherance of each bond act, bonds may be issued by the board upon request of the department in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for conversion or exchange, and for the issuance of temporary bonds bearing interest at such rate or rates, maturing at such times not exceeding 30 years from date of issue, subject to redemption at such earlier times and prices and on such notice, and payable at the office of such fiscal agency of the state as the board shall determine, subject to the limitations contained in this part and in the bond act.

(2) In all other respects the board is authorized to prescribe the form and terms of the bonds and do whatever is lawful and necessary for their issuance and payment. Bonds and any interest coupons appurtenant thereto must be signed by the members of the board, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. Action taken by the board under this part must be by a majority vote of its members. The state treasurer shall keep a record of all such bonds issued and sold.

(3) The board is authorized to employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under this part.

(4) The board is authorized to pay all costs of issuance of bonds, including without limitation rating agency fees, printing costs, legal fees, bank or trust company fees, costs to employ persons or firms to assist in the sale of the bonds, line of credit fees and charges, and all other amounts related to the costs of issuing the bonds from amounts available therefor in the general fund or from the proceeds of the bonds, in the discretion of the board.

(5) All proceeds of bonds and notes issued under this part must be deposited in the capital projects account, except that any premiums and accrued interest received and the proceeds of refunding bonds or notes must be deposited in the debt service account.

History: En. Sec. 3, Ch. 184, L. 1983.

Cross-References

Facsimile signatures and seals, 2-16-114.
Fund structure, 17-2-102.

17-5-804. Use of capital projects account. The capital projects account must be segregated by the treasurer from all other money in that or any other account in the state treasury and used only to pay costs of the projects for which bonds were issued, in accordance with the respective bond accounts. The department may transfer all money authorized by the legislature for its administrative expenditures from the capital projects account to a special revenue fund.

History: En. Sec. 4, Ch. 184, L. 1983; amd. Sec. 4, Ch. 372, L. 1985; amd. Sec. 18, Ch. 703, L. 1985; amd. Sec. 24, Ch. 422, L. 1997.

Cross-References

Fund structure, 17-2-102.

17-5-805. Bond anticipation notes — when issued — payment of principal and interest. (1) When the board has been authorized to issue and sell bonds under this part, it may, pending the issuance of the bonds, issue in the name of the state temporary notes in anticipation of the money to be derived from the sale of the bonds. The notes must be designated as "bond anticipation notes". The proceeds of the sale of the bond anticipation notes may be used only for the purposes for which the proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds in anticipation of which the original notes were issued.

(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 1 year after the date of issue may be issued from time to time as the proceeds thereof are needed. Such notes must be authorized by the board and must have such terms and details as may be provided by resolution of the board. However, each resolution of the board authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify:

(i) the principal amount of the notes or maximum principal amount of the notes that may be outstanding at any one time;

(ii) the rate or rates of interest, the maximum rate of interest, or the interest rate formula (to be determined in the manner specified in the resolution authorizing the notes) to be incurred through the issuance of such notes; and

(iii) the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection (2) to be issued and sold, in whole or in part, from time to time, and may delegate to the state treasurer the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of interest, and such other terms and details of the notes as may be considered appropriate by the board, or the state treasurer in the event of such delegation. The board in its discretion, but subject to the limitations contained in this section, may also provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either in or outside of the state, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes, from time to time, without further action by the board, unless and until the board revokes such authority to refund; and

(d) such other terms and conditions as the board may consider appropriate.

(4) In connection with the issuance and sale of notes as provided in this section, the board may arrange for lines of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on such lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing such terms and conditions as the board may authorize in the resolution approving them.

History: En. Sec. 5, Ch. 184, L. 1983.

Cross-References

Issuance of notes in anticipation of revenue, 17-1-201.

17-5-806. Repealed. Sec. 3, Ch. 51, L. 1995.

History: En. Sec. 6, Ch. 184, L. 1983.

Part 9
Highway Revenue Bonds

Part Cross-References

Highway revenue nondiversion, Art. VIII, sec. 8, Mont. Const.

17-5-901. Short title. This part may be cited as the "Montana Highway Revenue Bonds Act of 1983".

History: En. Sec. 1, Ch. 557, L. 1983.

17-5-902. Purpose. The purpose of this part is to provide for the financing of the cost of state highway and federal-aid highway projects through the issuance of highway revenue bonds secured by a pledge and appropriation of highway revenue.

History: En. Sec. 2, Ch. 557, L. 1983.

17-5-903. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of examiners created under 2-15-1007.

(2) "Bonds" means bonds, notes, or other evidences of indebtedness issued pursuant to this part as highway revenue bonds.

(3) "Cost", as applied to any highway project, means any cost of construction or acquisition of any part of the highway project, including but not limited to the cost of supervising, inspecting, and constructing the highway project, interest during construction and for up to 6 months thereafter, and all costs and expenses incidental thereto; the costs of locating, surveying, mapping, resurfacing, restoration, and rehabilitation; acquisition of rights-of-way; relocation assistance; elimination of hazards of railroad grade crossings; acquisition of replacement housing sites; and acquisition, rehabilitation, relocation, and construction of replacement housing; and improvements necessary to directly facilitate and control traffic flow, including grade separation of intersections, widening of lanes, channelization of traffic, and traffic control systems.

(4) "Department" means the department of transportation provided for in Title 2, chapter 15, part 25.

(5) "Highway projects" means the construction, reconstruction, maintenance, and repair of federal-aid highways and state highways as such terms are defined in 60-1-103.

(6) "Highway revenues" means the revenues specified in Article VIII, section 6, of the Montana constitution as revenues from gross vehicle weight fees and excise and license taxes (except general sales and use taxes, if any) on gasoline, fuel, and other energy sources used to propel vehicles on public highways and any other revenues, taxes, or receipts credited to the department in the state special revenue fund and the federal special revenue fund.

(7) "Outstanding bonds" means bonds issued and outstanding at any particular time but does not include bonds owned by the state, bonds that have been refunded, or bonds for the payment of which an irrevocable deposit of cash and United States government securities has been made in an amount sufficient to pay principal, interest, and redemption premium, if any, when due.

History: En. Sec. 3, Ch. 557, L. 1983; amd. Sec. 4, Ch. 249, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

17-5-904 through 17-5-910 reserved.

17-5-911. Highway revenue bond debt service account — deposit of bond proceeds. (1) There is in the debt service fund a highway revenue bond debt service account. Subject only to the prior pledge and appropriation made by 17-5-507, the state treasurer must deposit such highway revenues as may be pledged to the payment of particular bonds, to the credit of the highway revenue bond debt service account as required by resolution or indenture.

(2) All proceeds of an issue of bonds must be deposited in a separate account in the state special revenue fund, except that any premiums and accrued interest received may be deposited

in a separate account in the debt service fund established for that bond issue by resolution or indenture. No more than the principal and interest on the bonds due in any year may be retained in the highway revenue bond debt service account for the payment of bonds. The remainder of pledged revenues is available for authorized purposes of the department. Money deposited in such separate accounts in the state special revenue fund until spent for project purposes may be pledged and appropriated for the payment of bonds, which are a first lien and prior charge upon such funds, and such funds may be used for payment of bonds to the extent highway revenues deposited in the highway revenue bond debt service account are not sufficient for such purpose.

(3) Interest and investment earnings on the separate accounts named in subsections (1) and (2) shall be retained in the separate accounts referred to in subsection (2).

History: En. Sec. 4, Ch. 557, L. 1983; amd. Sec. 4, Ch. 249, L. 1983; amd. Sec. 3, Ch. 20, Sp. L. June 1986.

Cross-References

Fund structure, 17-2-102.
Interest income to general fund, 17-6-202.

17-5-912. Pledge of highway revenues. All or any portion of highway revenues may be pledged to the payment of the principal, interest, and redemption premium, if any, on particular issues of state highway revenue bonds, and such pledge is and remains at all times a first lien and prior charge upon such pledged highway revenues credited to the highway revenue bond debt service account, subject to a first lien and charge in favor of certain highway bonds as provided in 17-5-507 and subject to the pledge of particular highway revenues to secure particular issues of highway revenue bonds.

History: En. Sec. 5, Ch. 557, L. 1983; amd. Sec. 4, Ch. 249, L. 1983.

Cross-References

State funds, Title 60, ch. 3, part 2.

17-5-913. Authority to issue highway revenue bonds. The board may issue and sell highway revenue bonds to finance the cost of highway projects, to pay the costs of issuing the bonds, and to provide for reserves, upon recommendation of the department. The state reserves the right to issue additional bonds secured equally and ratably by the pledge and appropriation of the highway revenues or separately secured by a portion of highway revenues subject only to the pledge of particular highway revenues to secure particular bonds.

History: En. Sec. 6, Ch. 557, L. 1983.

Cross-References

Highways — legislative policy and intent, 60-1-102.

17-5-914. Continuation of taxes — limit on additional highway revenue bonds. The legislature shall provide for the continued assessment, levy, collection, and deposit of highway revenues into the state special revenue fund for the credit of the department in amounts sufficient to pay, when due, the annual debt service charges on all outstanding highway revenue bonds. The board is authorized to include a contractual undertaking for the benefit of bondholders to this effect in the resolution or indenture under which the bonds are issued.

History: En. Sec. 7, Ch. 557, L. 1983; amd. Sec. 4, Ch. 249, L. 1983.

Cross-References

State funds, Title 60, ch. 3, part 2.

17-5-915 through 17-5-920 reserved.

17-5-921. Bond anticipation notes — issued when — payment of principal and interest. (1) The board may, pending the issuance of bonds, issue temporary notes in anticipation of the proceeds to be derived from the sale of the bonds, which notes are designated as “bond anticipation notes”. The proceeds of the sale of the bond anticipation notes must be used only for the purpose for which the proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary or desirable to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds in anticipation of which the original notes were issued.

(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 3 years after the date of issue may be issued from time to time as the proceeds thereof are needed. Such notes must be authorized by the board and have such terms and provisions as may be provided by resolution of the board; however, each resolution of the board authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify the principal amount of the notes or maximum principal amount of the notes which may be outstanding at any one time, the rate or rates of interest or maximum rate of interest or interest rate formula (to be determined in the manner specified in the resolution authorizing the notes) of such notes, and the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection (2) to be issued and sold, in whole or in part, from time to time, and may delegate to the state treasurer the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of interest, and such other terms and details of the notes as may be considered appropriate by the board or, if there has been such a delegation, the state treasurer. The board may, in its discretion but subject to the limitations contained in this section, provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either inside or outside the state, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes, from time to time, without further action by the board, unless and until the board revokes such authority to refund; and

(d) such other terms and conditions as the board may consider appropriate.

History: En. Sec. 8, Ch. 557, L. 1983.

Cross-References

Issuance of notes in anticipation of revenue, 17-1-201.

17-5-922. Form — principal and interest — fiscal agent — bonds authorized. (1) Each series of bonds may be issued by the board at public or private sale, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at such rate or rates or the method of determining such rate or rates, maturing at such times, not more than 40 years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of a fiscal agency of the state as the board shall determine, subject to the limitations contained in this part. Any action taken by the board under this part must be approved by at least a majority vote of its members.

(2) In all other respects the board is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(3) Bonds and any interest coupons appurtenant thereto must be signed by the members of the board, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(4) The board may employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under this part.

(5) In connection with the issuance and sale of bonds, the board may arrange for lines of credit or letters of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for bonds issued pursuant to this part. Amounts drawn on such lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing such terms and conditions as the board may authorize in the resolution approving the same.

(6) No more than $150 million of bonds issued under this part may be outstanding at any time. No additional bonds, other than refunding bonds, may be issued until the pledge in favor of the highway revenue bonds is satisfied and discharged.

History: En. Sec. 9, Ch. 557, L. 1983.

Cross-References

Facsimilie signatures and seals, 2-16-114.
Rates of interest, Title 17, ch. 5, part 1.
Acceptance and issuance of drafts and letters of credit, 32-1-437.

17-5-923. Trust indenture. In the discretion of the board, bonds issued under this part may be secured by a trust indenture by and between the board and a trustee, which may be any trust company or bank having the powers of a trust company inside or outside of the state. Each trust indenture or an executed counterpart thereof must be filed in the office of the secretary of state. The filing of a trust indenture or an executed counterpart thereof in the office of the county clerk and recorder of the county in which the property covered by the trust indenture is located is constructive notice of its content to all persons from the time of filing, and the recording of the trust indenture or its content is not necessary.

History: En. Sec. 10, Ch. 557, L. 1983.

Cross-References

Filing of security interest, Title 30, ch. 9A, part 5.
Giving security for deposit prohibited — exceptions, 32-1-447.

17-5-924. Provisions for protecting bondholders. The resolution of the board providing for the issuance of bonds or the trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the state, the board, and the departments, boards, or agencies of state government in relation to the construction, reconstruction, improvement, maintenance, and repair of the highway projects financed with the proceeds of the bonds and the custody, safeguarding, and application of all money. The trust indenture may set forth the rights and remedies of the bondholders customary in trust indentures, deeds of trusts, and mortgages securing bonds or debentures of corporations. No enumeration of particular powers granted by this section impairs any general grant of power contained in this part.

History: En. Sec. 11, Ch. 557, L. 1983.

17-5-925. Personal liability — suit to compel performance. (1) The members of the board and officers and employees of the departments, boards, or agencies of state government are not personally liable or accountable by reason of the issuance of or on any bond issued by the board under this part.

(2) Any holder of bonds issued under this part or any person or officer who is a party in interest, subject to any applicable agreements or trust indentures, may sue to enforce and compel the performance of the bond provisions as set out in this part.

History: En. Sec. 12, Ch. 557, L. 1983.

Cross-References

State liability exposure, Title 2, ch. 9, part 1.
Bonds of state officers and employees, Title 2, ch. 9, part 6.

17-5-926. Negotiability of bonds. Bonds issued under this part are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of bonds.

History: En. Sec. 13, Ch. 557, L. 1983.

Cross-References

Negotiable instruments, Title 30, ch. 3.

17-5-927. Signatures of board members. In case any member of the board whose signature appears on bonds or coupons issued under this part ceases to be a member before the delivery of the bonds, his signature is nevertheless valid and sufficient for all purposes as if the member had remained in office until delivery.

History: En. Sec. 14, Ch. 557, L. 1983.

17-5-928. Refunding obligations. (1) The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under this part, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the obligations. The issuance of refunding obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the state are governed by the appropriate provisions of this part that relate to the issuance of the obligations.

(2) Refunding obligations issued as provided in subsection (1) may be sold or exchanged for outstanding obligations issued under this part. The proceeds may be applied to the purchase, redemption, or payment of the outstanding obligations. Pending the application of the proceeds of refunding obligations, with other available funds, to the payment of principal, accrued interest, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested as provided in Title 17, chapter 6.

History: En. Sec. 15, Ch. 557, L. 1983.

Cross-References

Refunding bonds, Title 17, ch. 5, part 3.

Crossover refunding bonds, Title 17, ch. 5, part 21.

17-5-929. Pledge of the state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the state and the holders of notes and bonds issued by the state under this part.

History: En. Sec. 16, Ch. 557, L. 1983.

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

17-5-930. Tax exemption of bonds — legal investments. (1) All bonds issued under this part, their transfer, and their income, including any profits made on their sale, are exempt from taxation by the state or any political subdivision or other instrumentality of the state, except for estate taxes.

(2) Bonds issued under this part are legal investments for any person or board charged with investment of public funds and are acceptable as security for any deposit of public money.

History: En. Sec. 17, Ch. 557, L. 1983; amd. Sec. 10, Ch. 9, Sp. L. May 2000.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 at end of (1) deleted references to inheritance taxes and gift taxes; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

Cross-References

Investment in state bonds by county, 7-7-123, 7-7-124.

Classification of bonds for tax, 15-6-204.

Part 10
Actions

17-5-1001. Action to restrain bond issues. (1) No action may be brought for the purpose of restraining the issuance and sale of bonds or other obligations by the state of Montana or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations after the expiration of 60 days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of 60 days from the date of the order, resolution, or ordinance authorizing the issuance thereof, on account of any defect, irregularity, or informality in giving notice of or in holding the election. No defense based upon any such defect, irregularity, or informality may be interposed in any action unless brought within this period.

(2) This section applies but is not limited to any action or defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon.

History: En. Sec. 1, Ch. 114, L. 1919; re-en. Sec. 9040, R.C.M. 1921; re-en. Sec. 9040, R.C.M. 1935; R.C.M. 1947, 93-2612(part); amd. Sec. 4, Ch. 540, L. 1979.

Cross-References

Action to restrain bond issues — time for bringing, 7-7-105, 20-9-465.

Part 11
Public Obligations Registration

17-5-1101. Short title. This part may be cited as the "Model Public Obligations Registration Act of Montana".

History: En. Sec. 1, Ch. 364, L. 1983.

17-5-1102. Definitions. As used in this part, the following definitions apply:

(1) (a) "Authorized officer" means, with respect to any certificated public obligation:

(i) an individual whose signature to the certificated public obligation is required or permitted; or

(ii) an individual whom an authorized officer may, either alone or with the concurrence of another or others, permit to affix his signature to the certificated public obligation and who is so permitted in writing by the authorized officer with any required concurrence.

(b) "Authorized officer" means, with respect to any uncertificated public obligation, any individual referred to in this subsection (1) as an authorized officer with respect to a certificated public obligation of the same class or series.

(2) "Certificated public obligation" means an obligation that is:

(a) issued pursuant to a system of registration;

(b) represented by an instrument; and

(c) either one of a class or series or by its terms divisible into a class or series of obligations.

(3) "Code" means the Internal Revenue Code of 1954, as amended.

(4) "Facsimile seal" means the reproduction by engraving, imprinting, stamping, or other means of the seal of the issuer, official, or official body.

(5) "Facsimile signature" means the reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

(6) "Financial intermediary" means a bank, broker, clearing corporation, or trust company or the nominee of any of them or other person or nominee which in the ordinary course of its business maintains public obligation accounts for its customers.

(7) "Issuer" means a public entity that:

(a) executes a certificated public obligation to evidence its duty to perform an obligation represented by the certificated public obligation;

(b) undertakes to perform an obligation that is an uncertificated public obligation; or

(c) becomes responsible for or in place of a public entity described as an issuer in this subsection (7).

(8) "Obligation" means an agreement of an issuer to pay principal and interest and includes a share, participation, or other interest in any such agreement.

(9) "Official actions" means the actions by statute, order, ordinance, resolution, contract, or other authorized means by which the issuer provides for issuance of a public obligation.

(10) "Official or official body" means the officer or body that is empowered under the laws of one or more states, including this state, to provide for original issuance of a public obligation of the issuer by defining the obligation and its terms, conditions, and other incidents; the successor or successors of any such official or official body; and such other person or group of persons as are assigned duties of such official or official body under applicable law from time to time.

(11) "Original issuance" means the first transfer of a public obligation by an issuer to a purchaser.

(12) "Public entity" means any entity, department, or agency that is empowered under the laws of one or more states, including this state, to issue obligations, any interest with respect to which may under any provision of law be provided an exemption from the income tax referred to in the code. The term "public entity" may include this state, a political subdivision, a municipal corporation, a state university or college, a school district or other special district, a joint agreement entity, a public authority, a public trust, a nonprofit corporation, or other organization.

(13) "Public obligation" means either a certificated or an uncertificated public obligation.

(14) "System of registration" and its variants means a plan:

(a) with respect to a certificated public obligation, that provides that:

(i) the certificated public obligation specify a person entitled to the public obligation or the rights it represents; and

(ii) transfer of the certificated public obligation may be registered upon books maintained for that purpose by or on behalf of the issuer; and

(b) with respect to an uncertificated public obligation, that provides that transfer of the uncertificated public obligation be registered upon books maintained for that purpose by or on behalf of the issuer.

(15) "Uncertificated public obligation" means an obligation that is:

(a) issued pursuant to a system of registration;

(b) not represented by an instrument; and

(c) either one of a class or series or by its terms divisible into a class or series of obligations.

History: En. Sec. 2, Ch. 364, L. 1983.

17-5-1103. Declarations of state interest — purposes. (1) Sections 103 and 103A of the code provide that interest with respect to certain obligations may not be exempt from the income tax if they are not in registered form. It is therefore a matter of state concern that public entities be authorized to provide for the issuance of obligations in such form. It is a purpose of this part to authorize all public entities to establish and maintain a system pursuant to which obligations may be issued in registered form within the meaning of sections 103 and 103A of the code.

(2) Obligations have traditionally been issued in bearer rather than in registered form, and a change from bearer to registered form will significantly affect the relationships, rights, and duties of issuers of and the persons that deal with obligations and, by such effect, the costs. Such effects will impact the various issuers and varieties of obligations differently, depending on their legal and financial characteristics, their markets, and their adaptability to recent and prospective technological and organizational developments. It is therefore a matter of state concern that public entities be provided flexibility in the development of systems of registration and control over system incidents, so as to accommodate differing impacts. It is a purpose of this part to provide for the establishment and maintenance, and amendment from time to time, of differing systems of registration of obligations, including system incidents, so as to accommodate the differing impacts upon issuers and varieties of obligations.

History: En. Sec. 3, Ch. 364, L. 1983.

Cross-References

Classification of state bonds for tax, 15-6-204.

Registration of investment securities, Title 30, ch. 8, part 4.

17-5-1104. Construction. This part must be construed in conjunction with the Uniform Commercial Code and the principles of contract law relative to the registration and transfer of obligations.

History: En. Sec. 14, Ch. 364, L. 1983.

Cross-References

Transfer of obligation, Title 28, ch. 1, part 10.

U.C.C. — investment securities, Title 30, ch. 8.

17-5-1105. Applicability — election — rescission. (1) Public obligations may be issued as certificated or uncertificated public obligations as provided in this part, notwithstanding provisions of law providing for issuance in other forms. Whenever bonds are issued under this part, the provisions of this part are alternative and supplemental to such other provisions.

(2) Nothing in this part limits or prevents the issuance of obligations in any other form or manner authorized by law.

(3) The provisions of this part may be applied to obligations that have previously been approved by vote, referendum, or hearing, authorizing or permitting the authorization of obligations in bearer and registered form or in bearer form only, and such obligations need not be resubmitted for a further vote, referendum, or hearing for the purpose of authorizing or permitting the authorization of obligations in registered form only.

History: En. Sec. 13, Ch. 364, L. 1983.

17-5-1106. Records — no public inspection — locations. (1) With regard to the ownership or pledge of public obligations, records are not subject to inspection or copying under any law of this state relating to the right of the public to inspect or copy public records.

(2) Registration records of the issuer may be maintained at locations inside or outside this state determined by the issuer.

History: En. Sec. 12, Ch. 364, L. 1983.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Public records, Title 2, ch. 6.
Right to inspect and copy public records, 2-6-102, 2-6-104.

17-5-1107 through 17-5-1110 reserved.

17-5-1111. System of registration. (1) Each issuer is authorized to establish and regularly maintain a system of registration with respect to each public obligation that it issues. The system may be either a system pursuant to which only certificated public obligations are issued or a system pursuant to which both certificated and uncertificated public obligations are issued. The issuer may discontinue and reinstitute either system from time to time.

(2) The system must be established and regularly maintained or amended, discontinued, or reinstituted for the issuer by the official or official body.

(3) The system must be described in the official actions that provide for original issuance and in subsequent official actions providing for amendments and other matters from time to time. Such description may be by reference to a program of the issuer that is established by the official or official body.

(4) The system must define the method or methods by which transfer of the public obligations is effective with respect to the issuer, which method or methods are exclusive (substantial compliance being essential to a valid transfer) and by which payment of principal and any interest must be made. The system may permit the issuance of public obligations in any denomination to represent several public obligations of smaller denominations. The system may also provide for the form of any certificated public obligations, for differing record and payment dates, for varying denominations, and for accounting, canceled certificate destruction, and other incidental matters.

(5) Under a system pursuant to which both certificated and uncertificated public obligations are issued, both types of public obligations may be regularly issued or one type may be regularly issued and the other type issued only under described circumstances or to particular described categories of owners. Under a system pursuant to which uncertificated public obligations are regularly issued, provisions may be made for registration of pledges and releases.

(6) The system may include covenants of the issuer as to amendments, discontinuances, and reinstitutions and the effect of such on the exemption of interest from the income tax provided for by the code.

(7) If the effect of a conversion from one of the forms of public obligations provided for in this part to a form not provided for in this part is that interest will continue to be exempt from the income tax provided for by the code, this part does not preclude such conversion.

(8) To the extent not inconsistent with this part, the rights provided by other laws with respect to obligations in other forms must be provided with respect to obligations in forms that may be used under this part.

History: En. Sec. 4, Ch. 364, L. 1983.

Cross-References

Registration of bonds, 7-7-4257.
Negotiable instruments — transfer and negotiation, Title 30, ch. 3, part 2.
Investment securities — registration, Title 30, ch. 8, part 4.

17-5-1112. Certificated public obligation — execution — authentication. (1) A certificated public obligation must be executed by the issuer by:

(a) the signing by an authorized officer with the manual signature of such officer; or

(b) the signing by such officer with a facsimile signature in lieu of the manual signature of such officer.

(2) Each certificated public obligation may, in addition to the signature or signatures of an authorized officer or officers, have placed upon it a certificate or certificates as authenticating trustee, registrar, transfer agent, or the like. Such certificate may be signed by the manual signature of an individual or by a facsimile signature in lieu of a manual signature, provided that at least one certificate is signed by a manual signature.

(3) The certificated public obligation must bear the manual signature of either:

(a) an authorized officer as defined in 17-5-1102; or

(b) a person described in subsection (2).

History: En. Sec. 5, Ch. 364, L. 1983.

Cross-References

Use of facsimile signatures on bonds, 2-16-114.

17-5-1113. Certificated public obligation — signatures. (1) No certificated public obligation signed by the authorized officers at the time of the signing is invalid or without binding effect even though before the issuance thereof any or all of such officers have ceased to fill their respective offices.

(2) Any authorized officer employed to sign any certificated public obligation may adopt as and for the signature of the officer the signature of a predecessor in office in the event that such predecessor's signature appears on such certificated public obligation.

History: En. Sec. 6, Ch. 364, L. 1983.

17-5-1114. Certificated public obligation — seal. When a seal is required or permitted in the execution of any certificated public obligation, an authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

History: En. Sec. 7, Ch. 364, L. 1983.

Cross-References

Seals, Title 1, ch. 4, part 2.

17-5-1115. Uncertificated public obligation — signed statements. The issuer shall provide, with respect to its uncertificated public obligations, for the sending of written statements that provide a record of certain rights as of the time of issuance of the statements. The statements must be sent to each person acquiring rights by registration in uncertificated public obligations, and the statements so sent must be signed by an authorized officer or by a person whose signature is required or permitted to be placed on a certificated public obligation of the same class or series. Statements, as such, confer no right on the recipient. Statements are neither a negotiable instrument nor a security.

History: En. Sec. 8, Ch. 364, L. 1983.

17-5-1116 through 17-5-1120 reserved.

17-5-1121. Agents — depositories. (1) An issuer may appoint for a term as may be agreed, including for so long as a public obligation may be outstanding, corporate or other authenticating trustees, transfer agents, registrars, or paying or other agents and specify their rights, compensation, and duties, limit their liabilities, and provide for their payment of liquidated damages in the event of breach of certain of the duties imposed, which liquidated damages may be made payable to a financial intermediary. No trustee, transfer agent, registrar, paying or other agent need have an office or do business within this state.

(2) An issuer may enter into agreements with custodian banks and financial intermediaries, and nominees of any of them, in connection with the establishment and maintenance by others of a central depository system for the transfer or pledge of public obligations. The custodian banks, financial intermediaries, and nominees may, if qualified and acting as fiduciaries, also serve as authenticating trustees, transfer agents, registrars, or paying or other agents of the issuer with respect to the same issue of public obligations.

History: En. Sec. 9, Ch. 364, L. 1983.

17-5-1122. Costs — collection. (1) An issuer, prior to or at original issuance, may provide as a part of a system of registration that the transferor or transferee of the public obligations pay all or a designated part of the costs of the system, that costs be paid out of the proceeds of the public obligations, or that both methods be used. The portion of the costs of the system not provided to be paid by the transferor or transferee or out of proceeds is the liability of the issuer.

(2) The issuer may as a part of the system provide for reimbursement or for satisfaction of its liability by payment by others. The issuer may enter into agreements with others respecting reimbursement or payment, may establish fees and charges pursuant to such agreements or otherwise, and may provide that the amount or estimated amount of the fees and charges must be reimbursed or paid from the same sources and by means of the same collection and enforcement procedures and with the same priority and effect as with respect to the obligation.

History: En. Sec. 10, Ch. 364, L. 1983.

17-5-1123. Deposits for security. Whenever under any law of this state a deposit of public obligations is authorized as security, public obligations otherwise meeting the authorized criteria may be deposited and must be accepted as security, provided that:

(1) in the case of a certificated public obligation, the instrument is assigned to the holder of the deposit; and

(2) in the case of an uncertificated public obligation, registration of a pledge is authorized by the system and the pledge of the uncertificated obligation is registered.

History: En. Sec. 11, Ch. 364, L. 1983.

Cross-References

State and local bonds and warrants as security for deposits of public funds, 17-6-103.

Part 12

Allocation of State and Local Private Activity Bonds (Repealed. Sec. 15, Ch. 190, L. 1987)

Part Compiler's Comments

Histories of Repealed Sections:

17-5-1201 and 17-5-1202. En. Secs. 1, 2, Ch. 426, L. 1985.

17-5-1203 through 17-5-1210 reserved.

17-5-1211 through 17-5-1220. En. Secs. 3 through 12, Ch. 426, L. 1985.

Part 13

Montana Unified Volume Cap Bond Allocation Plan Act

Part Cross-References

Board of Examiners, 2-15-1007.
Board of Investments, 2-15-1808.
Higher education student assistance, Title 20, ch. 26, part 11.
Financing of housing, Title 90, ch. 6, part 1.
Health facility development, Title 90, ch. 7.

17-5-1301. Short title. This part may be cited as "The Montana Unified Volume Cap Bond Allocation Plan Act".

History: En. Sec. 1, Ch. 190, L. 1987.

17-5-1302. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Allocation" means an allocation of a part of the state's volume cap to an issuer pursuant to this part.

(2) "Board" means the board of examiners.

(3) "Bonds" means bonds, notes, or other interest-bearing obligations of an issuer.

(4) "Cap bonds" means those private activity bonds and that portion of governmental bonds for which a part of the volume cap is required to be allocated pursuant to the tax act.

(5) "Department" means the department of administration.

(6) "Governmental bonds" means bonds other than private activity bonds.

(7) "Issuer" means a state issuer or local issuer.

(8) "Local issuer" means a city, town, county, or other political subdivision of the state authorized to issue private activity bonds or governmental bonds.

(9) "Local portion" means that portion of the state's volume cap reserved for local issuers.

(10) "Montana board of housing" (MBH) means the board created in 2-15-1814.

(11) "Montana board of investments" (MBI) means the board provided for in 2-15-1808.

(12) "Montana facility finance authority" (MFFA) means the authority provided for in 2-15-1815.

(13) "Montana higher education student assistance corporation" (MHESAC) means the nonprofit corporation established to provide student loan capital to the student loan program established by the board of regents of higher education under Title 20, chapter 26, part 11.

(14) "Private activity bonds" (PABs) has the meaning prescribed under section 141 of the Internal Revenue Code.

(15) "State issuer" means the state and any agency of the state authorized to issue private activity bonds. For this part only, the Montana higher education student assistance corporation is considered an agency of the state.

(16) "State portion" means that portion of the state's volume cap reserved for state issuers.

(17) "State's volume cap" means that amount of the volume cap specified by the department pursuant to 17-5-1311(2).

(18) "Tax act" means the latest limitation enacted by the United States congress on the amount of cap bonds that may be issued by a state or local issuer.

(19) "Volume cap" means, with respect to each calendar year, the principal amount of cap bonds that may be issued in the state in a calendar year as determined under the provisions of the tax act.

History: En. Sec. 2, Ch. 190, L. 1987; amd. Sec. 1, Ch. 168, L. 1991; amd. Sec. 1, Ch. 32, L. 2001; amd. Sec. 2, Ch. 137, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 32 in definition of allocation before "volume" inserted "state's"; in definition of local portion before "volume" inserted "state's"; in definition of Montana higher education student assistance corporation after "established" inserted "to provide student loan capital to the student loan program established by the board of regents of higher education"; in definition of private activity bonds after "section" substituted "141 of the Internal Revenue Code" for "1301 of the tax act"; in definition of state portion before "volume" inserted "state's"; inserted definition of state's volume cap; in definition of tax act after "means the" substituted "latest limitation" for "Tax Reform Act of 1986" and at end inserted "on the amount of cap bonds that may be issued by a state or local issuer"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 137 substituted Montana facility finance authority (MFFA) for Montana health facility authority (MHFA) as defined term; and made minor changes in style. Amendment effective July 1, 2001.

17-5-1303 through 17-5-1310 reserved.

17-5-1311. State's volume cap and reservations — department to adopt rule. (1) For each calendar year, the state's volume cap is the amount specified by the department pursuant to subsection (2). In each calendar year, subject to the provisions established by 17-5-1312 and 17-5-1313, 70% of the state's volume cap is the state portion and 30% is the local portion.

(2) The department shall adopt a rule for the state's volume cap specifying the maximum dollar value of cap bonds that may be issued in a calendar year. The rule adopted by the department must consider the volume cap.

History: En. Sec. 3, Ch. 190, L. 1987; amd. Sec. 2, Ch. 32, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 32 in (1) at end of first sentence substituted "the amount specified by the department pursuant to subsection (2)" for "$150 million" and in second sentence after "17-5-1313" substituted "70%" for "$105 million", before "volume" inserted "state's", and after "portion and" substituted "30%" for "$45 million"; inserted (2) requiring adoption of a rule for the state's volume cap; and made minor changes in style. Amendment to subsection (1) effective October 1, 2001; amendment to subsection (2) effective March 13, 2001.

17-5-1312. Allocation to state issuers. (1) Except as provided in subsection (5), the state portion must be allocated to state issuers pursuant to 17-5-1316.

(2) As a condition of receiving an allocation, each state issuer, upon issuance of the bonds, shall pay 30 cents per thousand of bonds to be deposited in the state general fund for the purpose of funding a portion of the comprehensive annual financial report audit.

(3) The following set-aside percentages of the state's volume cap must be made in each calendar year for the following state issuers:

State Issuer	Percentage
Board	4
MBH	41
MBI	25
MHESAC	26
MFFA	4
Total	100%

(4) Each set-aside expires on the first Monday in September.

(5) Prior to the set-aside expiration date, allocations may be made by the department to each state issuer only from its respective set-aside pursuant to 17-5-1316 and a state issuer is not entitled to an allocation except from its set-aside unless otherwise provided by the governor.

(6) After the expiration date, the amount of the set-aside remaining unallocated is available for allocation by the department to issuers pursuant to 17-5-1316 without preference or priority.

History: En. Sec. 4, Ch. 190, L. 1987; amd. Sec. 2, Ch. 168, L. 1991; amd. Sec. 3, Ch. 32, L. 2001; amd. Sec. 3, Ch. 137, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 32 in (3) at beginning after "following" substituted "set-aside percentages of the state's volume cap" for "set-asides" and deleted former column entitled "Allocation Amount" (see 2001 Session Law for former text); and made minor changes in style. Amendment effective October 1, 2001.

Chapter 137 in (3) near bottom of first column substituted "MFFA" for "MHFA". Amendment effective July 1, 2001.

17-5-1313. Allocation to local issuers. (1) The local portion must be allocated by the department pursuant to 17-5-1316, and no local issuer is entitled to an allocation except from the local portion set-aside.

(2) No more than $20 million of the local portion may be allocated for a single project or purpose prior to the first Monday in September of each year.

(3) After the first Monday in September, the local portion must be allocated by the department to issuers pursuant to 17-5-1316 without preference, priority, or limitation.

History: En. Sec. 5, Ch. 190, L. 1987.

17-5-1314. Authorization by the governor. The governor may order an allocation different than that allocated by the department to state and local issuers pursuant to 17-5-1312 and 17-5-1313.

History: En. Sec. 6, Ch. 190, L. 1987.

17-5-1315. Carryforward elections. (1) Between the first Monday in December and the second Wednesday in December, each issuer shall file with the department an application for a carryforward election with respect to any unallocated portion of the state's volume cap for the calendar year.

(2) Applications for carryforward elections may be filed only with respect to carryforward purposes authorized by the tax act. Each application for a carryforward election must contain

the information required of an application for allocation under 17-5-1316 and any additional information required by either the tax act or the department.

(3) If, as of the second Wednesday in December, the aggregate amount of applications for carryforward elections does not exceed the amount of the unallocated and unused state's volume cap, each application constitutes a valid carryforward election within the meaning of the tax act.

(4) If, as of the second Wednesday in December, the aggregate amount of applications for carryforward elections exceeds the unallocated and unused state's volume cap, the department shall determine which applications constitute a valid carryforward election within the meaning of the tax act.

(5) After receipt of an application, the department shall notify the applicant in writing of either the approval of the carryforward election or the reason for disapproval.

History: En. Sec. 7, Ch. 190, L. 1987; amd. Sec. 4, Ch. 32, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 32 in three places before "volume cap" inserted "state's". Amendment effective October 1, 2001.

17-5-1316. Allocations by the department. (1) The department shall administer the allocation of state's volume cap bonds to issuers in accordance with this section and 17-5-1312. Applications for an allocation for each issue of bonds must be made to the department in an acceptable form and, if applicable, must contain the following:

(a) the name of the issuer;

(b) a description of the purpose or purposes for which the proceeds of the state's volume cap bonds will be used, including, if appropriate, a description of the project or projects to be financed;

(c) the location of the project or projects;

(d) the name and address of each project owner and user;

(e) a certified copy of the inducement resolution adopted or official action taken by the issuer, pursuant to the tax act, approving the project or the purpose and granting preliminary authorization for the issuance of the state's volume cap bonds;

(f) the preliminary opinion of a qualified bond counsel stating that the proposed purpose for which the state's volume cap bonds are to be issued qualifies under applicable state law and the tax act and that the interest on the bonds is not taxable as gross income for purposes of federal income taxation;

(g) evidence that all public hearing requirements concerning the proposed purpose and project have been met;

(h) a copy of a letter from an underwriter, bank, or other financial institution certifying that in its opinion the proposed financing is feasible, that the state's volume cap bonds may be successfully sold under current market conditions, and that it has reviewed all of the information necessary to form its opinion;

(i) the amount of allocation requested; and

(j) such other information as the department considers necessary.

(2) The department shall issue allocations in chronological order of the receipt of completed applications. Completed applications received by the department on the same day must be ranked according to the earliest inducement resolution or official action date.

History: En. Sec. 8, Ch. 190, L. 1987; amd. Sec. 5, Ch. 32, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 32 near middle of first sentence of (1) and in (1)(b), (1)(e), (1)(f), and (1)(h) before "cap" inserted "state's volume". Amendment effective October 1, 2001.

17-5-1317. Notification of approval or disapproval by the department. After receipt of an application for an allocation, the department shall notify the applicant in writing of either the approval of the allocation or the reasons for disapproval.

History: En. Sec. 9, Ch. 190, L. 1987.

17-5-1318. Terms of allocations. (1) Unless terminated earlier by the issuer, an allocation is valid for 90 days from the date the department mails the notice of approval. Prior to the expiration of the 90-day period, the department may extend the period of validity for an additional 30 days upon presentation of evidence that an agreement to purchase the state's volume cap bonds for which the allocation was given has been obtained from an entity legally authorized to purchase them.

(2) If the state's volume cap bonds are not issued within the period of validity as determined under subsection (1), the allocation automatically expires.

(3) All allocations expire on December 31 of the year in which they were made. However, this subsection does not limit the term of an allocation for which a valid carryforward election has been made.

History: En. Sec. 10, Ch. 190, L. 1987; amd. Sec. 6, Ch. 32, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 32 in two places before "cap" inserted "state's volume". Amendment effective October 1, 2001.

17-5-1319 and 17-5-1320 reserved.

17-5-1321. Allocations not transferable. Allocations may not be transferred between projects or purposes.

History: En. Sec. 11, Ch. 190, L. 1987.

17-5-1322. Reapplication. (1) If the department disapproves an application for an allocation or if an allocation expires under 17-5-1318, the issuer may reapply for an allocation.

(2) A reapplication must be reviewed according to the chronological order of its receipt. Priority or preference may not be given to a reapplication.

History: En. Sec. 12, Ch. 190, L. 1987.

17-5-1323. Recordkeeping. The department shall maintain complete records of all applications for allocations to ensure that the requirements of the tax act, with respect to the volume cap, and the requirements of the state's volume cap are observed.

History: En. Sec. 14, Ch. 190, L. 1987; amd. Sec. 7, Ch. 32, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 32 at end before "are observed" inserted "and the requirements of the state's volume cap"; and made minor changes in style. Amendment effective October 1, 2001.

17-5-1324 reserved.

17-5-1325. Reassignment of bonding authority for agricultural purposes — contingency. If, at some time in the future, federal taxation laws allow the use of tax-exempt bonds to provide loans for the acquisition of farm or ranch land, a downpayment on the acquisition of farm or ranch land, or the acquisition or construction of depreciable property used in the operation of a farm or ranch, the allocation of bonding authority originally assigned to the Montana agricultural loan authority must be reassigned to the Montana board of investments to provide those loans.

History: En. Sec. 3, Ch. 168, L. 1991.

Part 14 reserved

Part 15
Economic Development Bonds

17-5-1501. Short title. This part shall be known and may be cited as the "Montana Economic Development Bond Act of 1983".

History: En. Sec. 1, Ch. 701, L. 1983.

17-5-1502. Legislative declaration. (1) It is the policy of the state of Montana, in the interest of promoting the health, safety, and general welfare of all the people of the state, to increase job opportunities and to retain existing jobs by making available, through the board of investments, funds for industrial, commercial, manufacturing, natural resource, agricultural, livestock, recreational, tourist, and health care development.

(2) The legislature finds that:

(a) a vigorous, diversified, and growing economy is the basic source of job opportunities;

(b) protection against unemployment and its economic burdens and the spread of economic stagnation can best be provided by promoting, attracting, stimulating, and revitalizing a diversified economy with contributions from industry, manufacturing, commerce, natural resource development, agriculture, livestock, recreation, tourism, and health care facilities; and

(c) the state of Montana has a responsibility to help create a favorable climate for new and improved job opportunities and a stable, growing, and healthy economy for its citizens by encouraging the development of business.

History: En. Sec. 2, Ch. 701, L. 1983; amd. Sec. 7, Ch. 581, L. 1987.

Cross-References

Planning and economic development, Title 90, ch. 1, part 1.

17-5-1503. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Bond" means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the board pursuant to this part.

(3) "Department" means the department of commerce provided for in 2-15-1801.

(4) "Finance" means to supply capital and, in the case of agricultural enterprises, to refinance a project and project costs.

(5) "Financial institution" means any bank, savings and loan association, credit union, development credit corporation, insurance company, investment company, trust company, savings institution, or other financial institution approved by the board.

(6) "Local government" means the city in which the project is located, if the project is located within an incorporated municipality, or the county if the project is located within the county but outside the boundaries of an incorporated municipality.

(7) "Major project" means a project whose cost or appraised value exceeds $800,000.

(8) "Project" means a project as defined in 90-5-101.

(9) "Project costs" means the costs of acquiring or improving any project, including the following:

(a) the actual cost of acquiring or improving real estate for any project;

(b) the actual cost of construction of all or any part of a project, including architects' and engineers' fees;

(c) all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition or improvement;

(d) bond reserves and premiums for insurance or guaranty of loan payments or lease rentals pledged to pay the bonds;

(e) the interest on such bonds for a reasonable time prior to construction, during construction, and not exceeding 6 months after completion of construction; and

(f) working capital for agricultural enterprise projects for a period not to exceed 1 year.

History: En. Sec. 1, Ch. 686, and Sec. 3, Ch. 701, L. 1983; amd. Sec. 1, Ch. 94, L. 1987; amd. Sec. 8, Ch. 581, L. 1987; amd. Sec. 1, Ch. 684, L. 1989.

17-5-1504. Powers of the board. The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this part;

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under this part;

(5) invest any funds not required for immediate use, as the board considers appropriate, subject to any agreements with its bondholders and noteholders;

(6) arrange for lines of credit from and enter into participation agreements with any financial institution;

(7) issue bonds for the purpose of defraying the cost of acquiring or improving any project or projects and securing the payment of the bonds as provided in this part;

(8) enter into agreements or other transactions with and accept grants and the cooperation of any governmental agency in furtherance of this part;

(9) sell, purchase, or insure loans to finance the costs of projects;

(10) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out this part;

(11) enter into agreements or other transactions with a federal agency, an agency or instrumentality of the state, a municipality, a private organization, or any other entity or organization in carrying out this part;

(12) with regard to property:

(a) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise;

(b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose of such property;

(c) hold, sell, assign, or otherwise dispose of any lease, mortgage, or loan owned by it or in its control or custody;

(d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption;

(e) make any disposition by public or private sale, with or without public bidding;

(f) commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement;

(g) bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure;

(h) operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests or the holders of its bonds or notes, provided such action is consistent with any agreement with such holders;

(13) service, contract, and pay for the servicing of loans;

(14) provide financial analysis and technical assistance where considered appropriate;

(15) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal, interest, security, or any other term of any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees, and charges in connection with making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. Interest, fees, and charges are limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses that may be incurred.

(17) procure insurance or guaranties in amounts and in the form the board considers desirable or necessary, from any party, including a governmental agency, against any loss in connection with its lease agreements, loan agreements, mortgage loans, and other assets or property; and

(18) perform any other acts necessary and convenient to carry out the purposes of the board and this part.

History: En. Sec. 2, Ch. 686, and Sec. 4, Ch. 701, L. 1983.

Cross-References

Exemption from loan limits, 32-1-432.
General duties of boards, 37-1-131.
Industrial development projects, Title 90, ch. 5, part 1.

17-5-1505. Financing programs of the board. (1) The board may:

(a) invest in, purchase or make commitments to purchase, and take assignment from financial institutions of notes, mortgages, loan agreements, and other securities evidencing loans for the acquisition, construction, reconstruction, or improvement of projects located in the state, under terms and conditions determined by the board;

(b) acquire, by construction, purchase, devise, gift, lease, or any combination of methods, from financial institutions, projects located in the state and lease such projects to others for such rentals and upon such terms and conditions as determined by the board;

(c) make loans to financial institutions, under terms and conditions determined by the board, requiring the proceeds to be used by the financial institution for the purpose of financing the acquisition, construction, reconstruction, or improvement of projects located in the state; or

(d) finance projects located in the state upon such terms and conditions as determined by the board.

(2) The board may not operate any project as a business or in any other manner except as the lessor thereof or as may be necessary for a temporary period through the enforcement of its rights under a lease, loan agreement, or other security agreement.

History: En. Sec. 3, Ch. 686, and Sec. 5, Ch. 701, L. 1983; amd. Sec. 1, Ch. 640, L. 1985.

Cross-References

The Montana Unified Volume Cap Bond Allocation Plan Act, Title 17, ch. 5, part 13.
State investments, Title 17, ch. 6, part 2.
Investments of financial institutions, 32-1-424.
Exemption from loan limits, 32-1-432.

17-5-1506. Bonds and notes for projects and major projects. (1) The board may by resolution issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 17-5-1515, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds or to pay notes, including interest, and whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured, or issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its bonds is an obligation of the board payable out of any revenue, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or money.

(4) The notes and bonds must be authorized by resolutions of the board, bear a date, and mature at the times the resolutions provide. A note may not mature more than 5 years from the date of its issue. A bond may not mature more than 40 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination thereof. The notes and bonds must bear interest at a stated rate or rates or at a rate or rate determination as stated, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places inside or outside the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale, at prices above or below par, as determined by the board, and in a manner such that interest on the bonds is either exempt from or subject to federal income tax.

(5) The bonds issued under this part are exempt from the Montana Securities Act, but copies of all prospectus and disclosure documents must be deposited with the state securities commissioner for public inspection.

(6) The total amount of bonds secured under 17-5-1515 outstanding at any one time, except bonds as to which the board's obligations have been satisfied and discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may not exceed $75 million.

History: En. Sec. 4, Ch. 686, and Sec. 6, Ch. 701, L. 1983; amd. Sec. 2, Ch. 640, L. 1985; amd. Sec. 1, Ch. 589, L. 1991.

Cross-References

Limited obligation bonds — form and contents — sale — negotiability — filing, 90-5-103.

17-5-1507. Bond anticipation notes — issuance — payment of principal and interest. (1) The board may, pending the issuance of bonds, issue temporary notes in anticipation of the proceeds to be derived from the sale of the bonds. The notes shall be designated as "bond anticipation notes". The proceeds of the sale of the bond anticipation notes must be used only for the purpose for which the proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds in anticipation of which the original notes were issued.

(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 3 years after the date of issue may be issued from time to time as the proceeds thereof are needed. The notes must be authorized by the board and must have such terms and details as may be provided by resolution of the board. However, each resolution of the board authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify the principal amount of the notes or maximum principal amount of the notes which may be outstanding at any one time, the rate or rates of interest or maximum rate of interest or interest rate formula (to be determined in the manner specified in the resolution authorizing the notes to be incurred through the issuance of such notes), and the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection (2) to be issued and sold, in whole or in part, from time to time. The board may delegate to the administrator of the board the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of interest, and such other terms and details of the notes as considered appropriate by the board or the administrator in the event of such delegation. The board in its discretion but subject to the limitations contained in this section may also provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either inside or outside the state of Montana, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes from time to time, without further action by the board, unless and until the board revokes such authority to refund; and

(d) such other terms and conditions as the board considers appropriate.

(4) In connection with the issuance and sale of notes as provided in this section, the board may arrange for lines of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on such lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing such terms and conditions as the board may authorize in the resolution approving the same.

History: En. Sec. 5, Ch. 686, and Sec. 7, Ch. 701, L. 1983.

Cross-References

Issuance of notes in anticipation of revenue, 17-1-201.

17-5-1508. Provisions of bond resolutions. A resolution authorizing notes or bonds or any issue thereof may contain provisions, which must be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenue or property of the board to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(2) pledging all or any part of the assets of the board, including lease agreements, loan agreements, mortgages, and obligations securing them, to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(3) the use and disposition of the gross income from lease agreements, loan agreements, and mortgages owned by the board, and the payment of the principal of mortgages owned by the board;

(4) the setting aside of reserves for debt service funds in the hands of trustees, paying agents, and other depositories and the regulation and disposition thereof;

(5) limitations on the purpose for which the proceeds of the sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the bonds or of any issue thereof;

(6) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;

(7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which shall consent thereto, and the manner in which such consent may be given;

(8) a commitment to employ adequate and competent personnel at reasonable compensation; to set salaries, fees, and charges as may be determined by the board in conjunction with the department; and to maintain suitable facilities and services for the purpose of carrying out its programs;

(9) vesting in a trustee such property, rights, powers, and duties in trust as the authority determines to be necessary;

(10) defining the acts or omissions that shall constitute a default in the obligations and duties of the board to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver; and

(11) any other matters of like or different character that in any way affect the security or protection of the holders of the notes or bonds.

History: En. Sec. 6, Ch. 686, and Sec. 8, Ch. 701, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Cross-References

Provisions for security of bondholders, 90-5-105.

17-5-1509. Personal liability. The board and employees of the department are not personally liable or accountable by reason of the issuance of or on any bond or note issued by the board.

History: En. Sec. 7, Ch. 686, and Sec. 9, Ch. 701, L. 1983.

Cross-References

Government liability exposure and insurance coverage, Title 2, ch. 9.

17-5-1510. Purchase of notes and bonds — cancellation. The board may, subject to existing agreements with noteholders or bondholders and out of any funds available for that purpose, purchase notes or bonds of the board, which shall then be canceled, at a price not exceeding:

(1) the current redemption price plus accrued interest to the next interest payment if the notes or bonds are then redeemable; or

(2) the redemption price applicable on the first date after the purchase on which the notes or bonds become subject to redemption, plus accrued interest to that date, if the notes or bonds are not then redeemable.

History: En. Sec. 8, Ch. 686, and Sec. 10, Ch. 701, L. 1983.

17-5-1511. Trust indenture. (1) In the discretion of the board, the bonds may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company, either inside or outside the state. A trust indenture may contain provisions for protecting and enforcing bondholders' rights and remedies that are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, safeguarding, and application of all money. The authority may provide by a trust indenture for the payment of the proceeds of the bonds and revenues to the trustee under the trust indenture of another depository and for the method of disbursement, with the safeguards and restrictions it considers necessary.

(2) All expenditures incurred in carrying out a trust indenture may be treated as part of the operating expenses of the board.

History: En. Sec. 9, Ch. 686, and Sec. 11, Ch. 701, L. 1983.

17-5-1512. Negotiability of bonds. Notes and bonds issued by the board are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of notes and bonds.

History: En. Sec. 10, Ch. 686, and Sec. 12, Ch. 701, L. 1983.

Cross-References

Form of negotiable instruments, 30-3-104.

17-5-1513. Signatures of board members. If board members whose signatures appear on notes, bonds, or coupons cease to be members before the delivery of the notes or bonds, their signatures shall nevertheless be valid and sufficient for all purposes the same as if the members had remained in office until delivery.

History: En. Sec. 11, Ch. 686, and Sec. 13, Ch. 701, L. 1983.

17-5-1514. Accounts. The board may create funds and accounts necessary to implement this part. The funds and accounts may include:

(1) a fund into which bond proceeds are deposited;

(2) a common bond fund consisting of:

(a) a common debt service account;

(b) a capital reserve account as provided in 17-5-1515; and

(c) an operating account for defraying the operational costs of the board; and

(3) other funds or accounts.

History: En. Sec. 12, Ch. 686, and Sec. 14, Ch. 701, L. 1983; amd Sec. 48, Ch. 281, L. 1983.

Cross-References

Fund structure, 17-2-102.

17-5-1515. Reserve funds and appropriations. (1) The board may establish a capital reserve account and pay into it any:

(a) funds appropriated and made available by the state for the purpose of the account;

(b) proceeds of the sale of notes or bonds to the extent provided in the resolutions or indentures of the board authorizing their issuance; and

(c) other funds which may be available to the board from any other source for the purpose of the account.

(2) All funds held in the capital reserve account must be used solely for the payment of the principal of or interest on the bonds secured in whole or in part by the account or the debt service fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity. Funds in the account may not be withdrawn at any time in an amount that reduces the account to an amount less than the sum of minimum capital reserve requirements established in the resolutions or indentures of the board for the account except, with respect to bonds secured in whole or in part by the account, for the purpose of making payment, when due, of principal, interest, redemption premiums, and debt service fund payments for the payment of which other money pledged is not available. Any income or interest earned by or incremental to the capital reserve account due to its investment may be transferred to other accounts of the board to an extent that does not reduce the amount of the capital reserve account below the sum of minimum capital reserve requirements for the account.

History: En. Sec. 13, Ch. 686, and Sec. 15, Ch. 701, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

17-5-1516. Maintenance of capital reserve account. (1) In order to assure the maintenance of the capital reserve account, the chairman of the board shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the minimum capital reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the sum of minimum capital reserve requirement. All sums appropriated by the legislature shall be deposited in the capital reserve account.

(2) All amounts appropriated to the board under this section constitute advances to the board and, subject to the rights of the holders of any bonds or notes of the board, must be repaid to the state general fund without interest from available operating revenues of the board in

excess of amounts required for the payment of bonds, notes, or other obligations of the board, for maintenance of the capital reserve account, and for operating expenses.

History: En. Sec. 14, Ch. 686, and Sec. 16, Ch. 701, L. 1983.

17-5-1517. Refunding obligations. The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under this part, including the payment of any redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the authority are governed by the appropriate provisions of this part that relate to the issuance of obligations. The proceeds of refunding obligations may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations and other available funds to the payment of principal, accrued interests, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested in such securities as the board considers appropriate.

History: En. Sec. 15, Ch. 686, and Sec. 17, Ch. 701, L. 1983.

Cross-References

Crossover refunding bonds, Title 17, ch. 5, part 21.

Refunding of bonds, 90-5-107.

17-5-1518. Tax exemption of bonds. Bonds, notes, or other obligations issued by the board under this part and their transfer and income (including any profits made on their sale) are free from taxation by the state or any political subdivision or other instrumentality of the state, except for estate taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

History: En. Sec. 16, Ch. 686, and Sec. 18, Ch. 701, L. 1983; amd. Sec. 11, Ch. 9, Sp. L. May 2000.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 near end of first sentence deleted references to inheritance taxes and gift taxes; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

Cross-References

Classification of state bonds for tax, 15-6-204.

17-5-1519. Repealed. Sec. 19, Ch. 589, L. 1991.

History: En. Sec. 17, Ch. 686, and Sec. 19, Ch. 701, L. 1983.

17-5-1520. Repealed. Sec. 19, Ch. 589, L. 1991.

History: En. Sec. 18, Ch. 686, and Sec. 20, Ch. 701, L. 1983.

17-5-1521. Adoption of rules. (1) The board shall adopt rules to establish:

(a) procedures for soliciting and evaluating applications and for notifying the local government of the application for purposes of complying with 17-5-1526 and 17-5-1527; and

(b) a system for evaluating applications, considering the following criteria:

(i) the applicant's net worth;

(ii) the applicant's training and experience in the industry involved in the proposed project;

(iii) the applicant's prospects for succeeding in the proposed project;

(iv) the degree to which the new or increased business resulting from the loan will meet the objectives of 17-5-1502; and

(v) any other factors the board may prescribe.

(2) The board shall adopt rules for the:

(a) organization, approval, standards, and regulation of project applicants;

(b) approval, standards, and regulation of financial institutions under this part;

(c) assessment, collection, and payment of all fees and charges in connection with making, purchasing, and servicing of its bonds and notes, mortgage lending, construction lending, temporary lending, and guaranty programs; and

(d) such other matters as the board considers necessary or desirable.

History: En. Sec. 19, Ch. 686, and Sec. 21, Ch. 701, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

17-5-1522. Pledge of the state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the board and the holders of notes and bonds issued by the board, including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose.

History: En. Sec. 20, Ch. 686, and Sec. 22, Ch. 701, L. 1983.

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

17-5-1523. Credit of state not pledged. Obligations issued under the provisions of this part do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or assets of the board. An obligation issued under this part must contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation, the obligation is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or interest on the obligation.

History: En. Sec. 21, Ch. 686, and Sec. 23, Ch. 701, L. 1983.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

17-5-1524. Taxation of projects. (1) Notwithstanding the fact that title to a project may be in the board, such projects are subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances if such projects are leased to or held by private interests on both the assessment date and the date the levy is made in that year. Such projects are not subject to taxation in any year if they are not leased to or held by private interests on both the assessment date and the date the levy is made in that year.

(2) When personal property owned by the board is taxed under this section and such personal property taxes are delinquent, levy by warrant for distraint for collection of such delinquent taxes may be made only on personal property against which such taxes were levied.

History: En. Sec. 22, Ch. 686, and Sec. 24, Ch. 701, L. 1983.

Cross-References

Industrial development revenue bonds — taxation of projects, 90-5-110.

17-5-1525. Bonds as legal investment. (1) Bonds issued by the board under the provisions of this part are securities in which all funds may be legally and properly invested, including capital in the control of or belonging to:

(a) public officers and public bodies of the state and its political subdivisions;

(b) insurance companies;

(c) credit unions, building and loan associations, investment companies, savings banks, banking associations, and trust companies;

(d) executors, administrators, trustees, and other fiduciaries; and

(e) pension, profit-sharing, and retirement funds.

(2) Bonds issued under 17-5-1505 through 17-5-1518 and 17-5-1521 through 17-5-1529 are securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or municipality of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law.

History: En. Sec. 23, Ch. 686, and Sec. 25, Ch. 701, L. 1983; amd. Sec. 2, Ch. 589, L. 1991.

Cross-References

Permissible investments, 17-6-211.
Investments of financial institutions, 32-1-424.
Investments of building and loan associations, 32-2-406.
Investment of credit union funds, 32-3-701.
Powers of trustees, Title 72, ch. 34, part 3.

17-5-1526. Procedure prior to financing projects. (1) The board may finance projects, other than major projects, under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

(b) the financing to be provided by the board for a project does not exceed either $800,000 or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor;

(e) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons;

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance the project or projects, to create and maintain reserves for payment of the debt service, and to meet all costs and expenses of issuing and servicing the bonds; and

(g) an applicant has submitted a statement that indicates that any contract let for a project costing more than $25,000 and financed from the proceeds of bonds issued under this part on or after July 1, 1993, will contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county shall, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if a request for a local hearing is not received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to projects financed with bonds the interest on which is subject to federal income taxes.

History: En. Sec. 26, Ch. 701, L. 1983; amd. Sec. 1, Ch. 296, L. 1985; amd. Sec. 1, Ch. 653, L. 1985; amd. Sec. 1, Ch. 273, L. 1987; amd. Sec. 5, Ch. 561, L. 1987; amd. Sec. 3, Ch. 589, L. 1991; amd. Sec. 1, Ch. 464, L. 1993.

Cross-References

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

17-5-1527. Procedure prior to financing major projects. (1) The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either $10 million or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than $1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over $1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor;

(e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons;

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance the project or projects, to create and maintain reserves for payment of the debt service, and to meet all costs and expenses of issuing and servicing the bonds; and

(g) an applicant has submitted a statement that indicates that any contract let for a project costing more than $25,000 and financed from the proceeds of bonds issued under this part on or after July 1, 1993, will contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified, and within 14 days shall advise the board if it elects to conduct the hearing; or

(b) if a request for a local hearing is not received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to major projects financed with bonds the interest on which is subject to federal income taxes.

History: En. Sec. 24, Ch. 686, L. 1983; amd. Sec. 2, Ch. 296, L. 1985; amd. Sec. 2, Ch. 653, L. 1985; amd. Sec. 2, Ch. 273, L. 1987; amd. Sec. 6, Ch. 561, L. 1987; amd. Sec. 4, Ch. 589, L. 1991; amd. Sec. 2, Ch. 464, L. 1993.

17-5-1528. Validity of pledge. Any pledge made by the board is valid and binding from the time the pledge is made. Revenue, money, or property pledged and received by the board is immediately subject to the lien of the pledge without any physical delivery or further act. The lien of any pledge is valid and binding against all parties having claims of any kind, whether in tort, contract, or otherwise, against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created is required to be recorded.

History: En. Sec. 25, Ch. 686, and Sec. 27, Ch. 701, L. 1983.

17-5-1529. Annual audits. The board's books and records related to economic development bonds must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit must be paid from the board's funds.

History: En. Sec. 26, Ch. 686, and Sec. 28, Ch. 701, L. 1983; amd. Sec. 1, Ch. 308, L. 1985; amd. Sec. 43, Ch. 483, L. 2001; amd. Sec. 1, Ch. 487, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 483 in (1) near middle after "department" inserted "of administration"; and made minor changes in style. Amendment effective July 1, 2001. The amendment by Ch. 487 rendered the amendment by Ch. 483 void.

Chapter 487 deleted former (1) that read: "(1) At least once each year, the bank examiners of the department shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds"; near beginning after "books and records" inserted "related to economic development bonds"; and made minor changes in style. Amendment effective May 1, 2001.

Cross-References

Audit costs and contracts, Title 5, ch. 13, part 4.

Part 16
Municipal Finance Consolidation Act

Part Cross-References

Long-term loans — destroyed school property, 20-6-640.

17-5-1601. Short title. This part shall be known and may be cited as the "Municipal Finance Consolidation Act of 1983".

History: En. Sec. 1, Ch. 620, L. 1983.

17-5-1602. Policy and purpose. (1) It is the policy of the state of Montana to:

(a) foster and promote, by all reasonable means, the provision of efficient capital markets and facilities for borrowing money by eligible government units to pay for capital improvements and other needs as otherwise authorized by law; and

(b) reduce, to the extent possible, costs of public indebtedness to taxpayers and residents by affording public bodies an appropriate degree of flexibility and choice in the marketing of their debt securities so as to minimize marketing costs and interest rates.

(2) It is the purpose of this part to promote the policies stated in subsection (1) by:

(a) creating a means for eligible government units to pool, in effect, the debt instruments they are otherwise authorized to offer for sale to the investment community in order to obtain economies of scale and reduce marketing and interest costs; and

(b) providing additional security for the payment of bonds and notes held by investors and thereby further reducing interest costs.

History: En. Sec. 2, Ch. 620, L. 1983; amd. Sec. 1, Ch. 208, L. 1995.

Cross-References

Local government — debt management, Title 7, ch. 7.

17-5-1603. Liberal construction. This part and the powers granted in this part must be liberally construed to effectuate the policies and purposes stated in this part.

History: En. Sec. 3, Ch. 620, L. 1983.

17-5-1604. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Department" means the department of commerce created in 2-15-1801.

(3) "Eligible government unit" means:

(a) any municipal corporation or political subdivision of the state, including without limitation any city, town, county, school district, authority as defined in 75-6-304, or other special taxing district or assessment or service district authorized by law to borrow money; or

(b) the state, any board, agency, or department of the state, or the board of regents of the Montana university system when authorized by law to borrow money.

(4) "Reserve fund" means the municipal finance consolidation act reserve fund created in 17-5-1630.

History: En. Sec. 4, Ch. 620, L. 1983; amd. Sec. 35, Ch. 620, L. 1983; amd. Sec. 9, Ch. 581, L. 1987; amd. Sec. 1, Ch. 593, L. 1991; amd. Sec. 1, Ch. 380, L. 1993; amd. Sec. 2, Ch. 208, L. 1995; amd. Sec. 21, Ch. 498, L. 1999.

17-5-1605. Board of investments to implement. The board of investments may make and enforce orders, rules, and bylaws that are necessary or desirable for the implementation of this part.

History: En. Sec. 5, Ch. 620, L. 1983; amd. Sec. 35, Ch. 620, L. 1983; amd. Sec. 10, Ch. 581, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Unified investment program — general provisions, 17-6-201.

17-5-1606. Bonds, bond anticipation notes, and notes of the board. (1) The board may by resolution, from time to time, issue negotiable notes and bonds to finance loans or refinance its loans to eligible government units and its purchases of eligible government unit bonds, registered warrants, and tax or revenue anticipation notes and other notes, to establish or replenish reserves securing the payment of its bonds and notes, and to finance all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time:

(a) issue notes to renew notes and bonds to pay notes, including interest;

(b) whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured; and

(c) issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) The board may by resolution, from time to time, in anticipation of the sale of its securities under this part, issue temporary notes and renewal notes.

(4) Except as otherwise expressly provided by resolution of the board, every issue of its notes and bonds is an obligation of the board payable out of any revenue, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenue, assets, or money.

(5)(a) The notes and bonds must be authorized by resolutions of the board, must bear a date, and must mature at times as provided in the resolutions. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination of serial and term bonds. The notes and bonds must:

(i) bear interest at a rate or rates;
(ii) be in denominations;
(iii) be in a form, either coupon or registered;
(iv) carry registration privileges;
(v) be executed in a manner;
(vi) be payable in a medium of payment, at places inside or outside the state; and
(vii) be subject to terms of redemption as provided in resolutions of the board.

(b) The notes and bonds of the board may be sold at public or private sale at prices, which may be above or below par, that are determined by the board.

History: En. Sec. 6, Ch. 620, L. 1983; amd. Sec. 9, Ch. 481, L. 1985; amd. Sec. 3, Ch. 208, L. 1995.

Cross-References

Issuance of notes in anticipation of revenue, 17-1-201.
Redemption of bonds before maturity, 17-6-213.

17-5-1607. Participation voluntary. Use of the financing mechanism created by this part is entirely voluntary, and an eligible government unit is not required to sell its bonds, bond anticipation notes, or notes to the board.

History: En. Sec. 7, Ch. 620, L. 1983; amd. Sec. 4, Ch. 208, L. 1995.

17-5-1608. *(Temporary)* **Limitations on amounts.** The board may not issue any bonds or notes that cause the total outstanding indebtedness of the board under this part, except for bonds or notes issued to fund or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in 7-6-1101, to exceed $80 million. *(Terminates June 30, 2011—sec. 9, Ch. 394, L. 2001.)*

17-5-1608. *(Effective July 1, 2011)* **Limitations on amounts.** The board may not issue any bonds or notes that cause the total outstanding indebtedness of the board under this part (except for bonds or notes issued to fund or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in 7-6-1101) to exceed $75 million.

History: En. Sec. 8, Ch. 620, L. 1983; amd. Sec. 10, Ch. 481, L. 1985; amd. Sec. 2, Ch. 94, L. 1987; amd. Sec. 1, Ch. 483, L. 1997; amd. Sec. 1, Ch. 394, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 394 at end substituted "$80 million" for "$75 million"; and made minor changes in style. Amendment effective July 1, 2001, and terminates June 30, 2011.

17-5-1609. Purchase of anticipation notes. Notwithstanding any other provision of law, an eligible government unit may issue and the board may purchase notes in anticipation of an otherwise authorized sale of eligible government unit securities. In connection with any purchase of anticipation notes, the board may by agreement with the eligible government unit impose terms, conditions, and limitations that in the board's opinion are proper under the circumstances and for the purposes and security of the board and the holders of its bonds or notes.

History: En. Sec. 9, Ch. 620, L. 1983; amd. Sec. 5, Ch. 208, L. 1995.

Cross-References

Sale of notes in anticipation of state revenue, 7-7-109.

17-5-1610. Refunding obligations. (1) The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under this part, including the payment of any redemption premium and any interest accrued to or to accrue to the date of redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the board are governed by the appropriate provisions of this part that relate to the issuance of obligations.

(2) Refunding obligations issued as provided in subsection (1) may be sold or exchanged for outstanding obligations issued under this part. The proceeds of refunding obligations may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations, with other available funds, to the payment of principal, accrued interest, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds of refunding obligations may be invested as provided in Title 17, chapter 6.

History: En. Sec. 10, Ch. 620, L. 1983.

Cross-References

County refunding general obligation bonds, Title 7, ch. 7, part 23.
Municipal refunding general obligation bonds, Title 7, ch. 7, part 43.
Crossover refunding bonds, Title 17, ch. 5, part 21.

17-5-1611. Additional powers of the board. In addition to all other powers conferred on the board by this part or any other law, the board has the power:

(1) to purchase or hold eligible government unit bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes at prices and in a manner that the board considers advisable;

(2) to sell eligible government unit bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes acquired or held by it at prices without relation to cost and in a manner that the board considers advisable;

(3) to invest funds or money acquired by the board as provided in 17-5-1641;

(4) with regard to an eligible local government unit, to:

(a) prescribe the form of application or procedure required for a loan or purchase of eligible government unit bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes;

(b) fix the terms and conditions of the loan or purchase; and

(c) enter into agreements with eligible government units with respect to loans or purchases;

(5) to render services to eligible government units in connection with public or private sales of their bonds, bond anticipation notes, registered warrants, tax or revenue anticipation

notes, or other notes that are eligible for purchase by the board under this part, including advisory and other services, and charge the eligible government units for the services;

(6) to charge for its costs and services in reviewing or acting upon a proposed loan to an eligible government unit or a proposed purchase by the board of bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes of the eligible government unit, whether or not the loan is made or the bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes are purchased;

(7) to fix and establish terms, interest rates, and provisions with respect to a purchase of eligible government unit bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes by the board, including:

(a) the date and maturities of the bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes;

(b) provisions as to redemption or payment before maturity; and

(c) any other matters judged by the board to be necessary, desirable, or advisable for the purchase or loan;

(8) in connection with any loan to an eligible government unit or purchase of bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes of an eligible government unit, to consider:

(a) the lawfulness and validity of the purpose to be served by the loan or purchase;

(b) the ability of the eligible government unit to secure borrowed money from other sources and the costs of borrowing;

(c) the ability of the eligible government unit to repay the loan, notes, or bonds;

(d) the priority of need for the particular public improvement or purpose to be financed; and

(e) varying the terms and conditions of its loans or purchases as between various eligible government units in accordance with their respective priorities and credit worthiness;

(9) to conduct examinations and hearings and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter material to its information and necessary to carry out this part;

(10) to issue subpoenas requiring the attendance of witnesses and the production of books and papers pertinent to any hearing before the board;

(11) to appoint, employ, or contract for the services of officers, employees, agents, financial or professional advisers, and attorneys and to pay compensation for their services as the board determines;

(12) to procure insurance against any losses in connection with its property, operations, or assets in amounts and from insurers as it considers desirable;

(13) to the extent permitted under its contracts with the holders of bonds or notes of the board, to consent to modification of the rate of interest, the time for payment of any installment of principal or interest, or the security for any other term of a bond, bond anticipation note, note, contract, or agreement of any kind to which the board is a party; and

(14) to do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this part.

History: En. Sec. 11, Ch. 620, L. 1983; amd. Sec. 11, Ch. 481, L. 1985; amd. Sec. 6, Ch. 208, L. 1995.

17-5-1612 through 17-5-1620 reserved.

17-5-1621. Provisions of bond resolutions. A resolution authorizing notes or bonds or any issue thereof may contain provisions that must be a part of the contract or contracts with the holders thereof as to:

(1) pledging all or any part of the revenue or funds of the board to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(2) the setting aside of reserves for debt service funds in the possession of trustees, paying agents, and other depositories and the regulation and disposition thereof;

(3) limitations on the purpose for which the proceeds of the sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the notes or bonds or of any issue thereof;

(4) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;

(5) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(6) a commitment to employ adequate and competent personnel at reasonable compensation, salaries, fees, and charges as may be determined by the board in conjunction with the department and to maintain suitable facilities and services for the purpose of carrying out its programs;

(7) vesting in a trustee such property, rights, powers, and duties in trust as the board determines; and

(8) defining the acts or omissions that constitute a default in the obligations and duties of the board to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver. Rights and remedies may not be inconsistent with the laws of this state and the other provisions of this part.

History: En. Sec. 12, Ch. 620, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Cross-References

Resolution to issue county bonds, 7-7-2238.

Resolution to issue municipal bonds, 7-7-4236.

17-5-1622. Validity of pledge. A pledge by the board is valid and binding from the time the pledge is made. The revenues, money, or property pledged and thereafter received by the board is immediately subject to the lien of the pledge without any physical delivery thereof or further act. The lien of any pledge is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

History: En. Sec. 13, Ch. 620, L. 1983.

17-5-1623. Nonimpairment by state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the board and an eligible government unit or between the board and the holders of notes and bonds issued by the board, including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose.

History: En. Sec. 14, Ch. 620, L. 1983; amd. Sec. 7, Ch. 208, L. 1995.

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

17-5-1624. Trust indenture. (1) In the discretion of the board, the bonds or notes of the board may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company inside or outside the state. A trust indenture may contain provisions for protecting and enforcing bondholders' rights and remedies that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the board in relation to the exercise of its powers and the custody, safeguarding, and application of all money. The board may provide by a trust indenture for the payment of the proceeds of the bonds or notes and the revenues to the trustee under the trust indenture of another depository and for the method of disbursement, with safeguards and restrictions it considers necessary.

(2) All expenditures incurred in carrying out a trust indenture may be treated as part of the general overhead cost of the board.

History: En. Sec. 15, Ch. 620, L. 1983.

17-5-1625. Presumption of validity. After issuance, all bonds or notes of the board are conclusively presumed to be fully authorized by and issued under all the laws of this state and any person or governmental unit is estopped from questioning their proper authorization, sale, issuance, execution, or delivery by the board.

History: En. Sec. 16, Ch. 620, L. 1983.

17-5-1626. Signatures of board members. If any of the board members whose signatures appear on notes or bonds or coupons cease to be members before the delivery of the notes or bonds, their signatures shall nevertheless be valid and sufficient for all purposes as if the members had remained in office until delivery.

History: En. Sec. 17, Ch. 620, L. 1983.

Cross-References

Form and execution of county bonds, 7-7-2255.
Form and execution of municipal bonds, 7-7-4255.

17-5-1627. Negotiability of bonds or notes. Notwithstanding any other provisions of law, a bond or note issued under this part is fully negotiable for all purposes of the Uniform Commercial Code, Title 30, chapters 1 through 9A, and a holder or owner of a bond or note or of a coupon appurtenant to it, by accepting the bond, note, or coupon, is conclusively presumed to have agreed that the bond, note, or coupon is fully negotiable for all purposes of the Uniform Commercial Code.

History: En. Sec. 18, Ch. 620, L. 1983.

17-5-1628. Bonds or notes as legal investments. Notwithstanding the restrictions of any other law, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest debt service funds, money, or other funds belonging to them or within their control in bonds or notes issued under this part.

History: En. Sec. 19, Ch. 620, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Cross-References

Permissible investments, 17-6-211.
Investments of financial institutions, 32-1-424.
Investments of building and loan associations, 32-2-406.
Investment of credit union funds, 32-3-701.
Powers of trustees, Title 72, ch. 34, part 3.

17-5-1629. Tax exemption of bonds. Bonds, notes, or other obligations issued by the board under this part, their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or other instrumentality of the state, except for estate taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

History: En. Sec. 20, Ch. 620, L. 1983; amd. Sec. 12, Ch. 9, Sp. L. May 2000.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 near end of first sentence deleted references to inheritance taxes and gift taxes; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

Cross-References

Classification of state bonds for tax, 15-6-204.

17-5-1630. Reserve fund. (1) The board shall establish and maintain a municipal finance consolidation act reserve fund, to which there shall be deposited or transferred:

(a) all money appropriated by the legislature for the purposes of the fund in accordance with the provisions of subsection (4);

(b) all proceeds of bonds required to be deposited in the fund by terms of a contract between the board and its bondholders or a resolution of the board with respect to the proceeds of bonds;

(c) the proceeds of any bond issue of the state that is authorized for such purpose;

(d) all other money appropriated by the legislature to the reserve fund; and

(e) any other money or funds of the board that it decides to deposit in the fund.

(2) All money held in the reserve fund shall be used solely for the payment of the principal of or interest on the bonds or notes secured in whole or in part by the fund or the debt service fund payments with respect to the bonds or notes, the purchase or redemption of the bonds or notes, the payment of interest on the bonds or notes, or the payment of any redemption premium required to be paid when the bonds or notes are redeemed prior to maturity. Money in the reserve fund may not be withdrawn at any time in an amount that reduces the fund to an amount less than the sum of minimum reserve requirements established in the resolutions or indentures of the board for the fund except, with respect to bonds or notes secured in whole or in part by the fund, for the purpose of making payment when due of principal, interest, redemption premiums, and debt service fund payments for the payment of which other money pledged is not available.

(3) Money in the reserve fund in excess of the required reserve may be withdrawn at any time by the board and transferred to another fund or account of the board established for purposes of this part, but not to any other fund or account.

(4) Nothing in this section creates a debt or liability of the state.

(5) Notwithstanding any provision of Title 17, chapter 6, the board may lend money for deposit to the reserve fund in an amount equal to any deficiency in the required debt service reserve. The loans shall be made on such reasonable terms and conditions as the board considers proper, including without limitation terms and conditions providing that the loans need not be repaid until the obligations of the board secured and to be secured by the reserve fund are no longer outstanding.

History: En. Sec. 21, Ch. 620, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 11, Ch. 581, L. 1987.

Cross-References

Fund structure, 17-2-102.

17-5-1631. Additional funds and accounts. The board may in its discretion establish additional reserves or other funds or accounts necessary, desirable, or convenient to further the accomplishment of the purposes of this part or to comply with the provisions of any of its agreements or resolutions.

History: En. Sec. 22, Ch. 620, L. 1983.

17-5-1632 through 17-5-1640 reserved.

17-5-1641. Investment. (1) Unless otherwise required by a resolution or agreement of the board, the board may invest funds coming under its control pursuant to this part in the same manner as permitted for investment of funds belonging to the state or held by the state treasurer.

(2) Funds from several or all accounts may be combined for investment, and any interest earned shall be prorated and credited to the various contributing accounts on the basis of the amounts thereof invested, calculated according to an average periodic balance or other generally accepted accounting principle. Such proration must be calculated at least once a year or upon a specific request made to the board.

(3) All securities purchased by the board as an investment remain in the custody of the state treasurer until the same are sold, exchanged, retired, or mature and are paid.

History: En. Sec. 23, Ch. 620, L. 1983.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Investments, Title 17, ch. 6, part 2.

17-5-1642. Credit of state not pledged. Obligations issued under the provisions of this part do not constitute a liability or obligation or a pledge of the faith and credit of the state but are payable solely from revenues or funds of the board generated or received for purposes of this part. An obligation issued under this part must contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation and the obligation is not a debt of the state and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the obligation.

History: En. Sec. 24, Ch. 620, L. 1983.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

17-5-1643. Sale or exchange of securities. (1) Notwithstanding any law applicable to or constituting any limitation on the maximum rate of interest per year payable on bonds or notes or to annual interest cost to maturity of money borrowed or received upon issuance of bonds or notes, an eligible government unit is authorized to contract to pay interest on or an interest cost per year for money borrowed from the board and evidenced by the eligible government unit securities purchased by the board without regard to any statutory limitations as to rate of interest per year payable or as to annual interest cost to maturity of money borrowed by the eligible government unit. An eligible government unit is authorized to contract with the board with respect to the loan or purchase, and the contract must contain the terms and conditions of the loan or purchase. An eligible government unit is authorized to pay fees and charges required to be paid to the board for its services.

(2) Notwithstanding any law applicable to or constituting any limitation on the sale of bonds or notes except the limitation on amount of bonded indebtedness, an eligible government unit may sell bonds or notes to the board by private negotiated sale, without limitation as to denomination. The bonds or notes may be fully registered or registerable as to principal only or in bearer form or may bear interest at the rate or rates, all in accordance with this section. The bonds or notes may be evidenced in the manner and may contain other provisions not inconsistent with this part and may be sold to the board without advertisement at the price or prices as may be determined, all as provided in the proceedings of the governing body of the eligible government unit pursuant to which the bonds or notes are authorized to be issued. The governing body of the eligible government unit may provide for the exchange of coupon bonds for fully registered bonds and of fully registered bonds for coupon bonds and for the exchange of any such bonds after issuance for bonds of larger or smaller denominations, all in the manner provided in the proceedings authorizing their issuance. The bonds in changed form or denominations must be exchanged for the surrendered bonds in the same aggregate principal amounts and in a manner that no overlapping interest is paid and the bonds in changed form or denominations bear interest at the same rate or rates and mature on the same date or dates as the bonds for which they are exchanged. If any exchange is made under this subsection, the bonds surrendered by the holders at the time of the exchange must be canceled. The exchange may be made only at the request of the holders of the bonds to be surrendered. The eligible government unit may require all expenses incurred in connection with the exchange to be paid by the holders.

History: En. Sec. 25, Ch. 620, L. 1983; amd. Sec. 8, Ch. 208, L. 1995.

17-5-1644. Care and custody of bonds purchased by the board. The board may:

(1) enter into agreements or contracts with a bank, trust company, or financial institution, inside or outside the state, as may be necessary, desirable, or convenient, in the opinion of the board, for rendering services in connection with:

(a) the care, custody, or safekeeping of bonds or other investments held or owned by the board pursuant to this part;

(b) the payment or collection of amounts payable as to principal or interest; and

(c) the delivery to the board of bonds or other investments purchased by it or sold by it pursuant to this part;

(2) pay the cost of those services; and

(3) in connection with any of the services to be rendered by a bank, trust company, or financial institution as to the custody and safekeeping of its bonds or investments, require security in the form of collateral bonds, surety agreements, or security agreements in a form and amount as, in the opinion of the board, is necessary or desirable.

History: En. Sec. 26, Ch. 620, L. 1983; amd. Sec. 9, Ch. 208, L. 1995.

17-5-1645. Insurance or guaranty. The board may obtain, from a department or agency of the United States or a nongovernmental insurer, insurance or guaranty for the payment or repayment of interest or principal, or both, or any part of interest or principal on bonds or notes issued by the board or on bonds, bond anticipation notes, or notes of eligible government units purchased or held by the board.

History: En. Sec. 27, Ch. 620, L. 1983; amd. Sec. 10, Ch. 208, L. 1995.

17-5-1646. Default in payment. If the board or eligible government unit defaults in the payment of principal or interest on an issue of notes or bonds after they become due, whether at maturity or upon call for redemption, and the default continues for 30 days or if the board or eligible government unit fails or refuses to comply with this part or defaults in an agreement made with the holders of an issue of notes or bonds, the holders of 25% of the aggregate principal amount of the outstanding notes or bonds of that issue have the right, upon proper application to a court of competent jurisdiction, to have a trustee appointed to represent the holders of those notes or bonds for the purposes provided in this part.

History: En. Sec. 28, Ch. 620, L. 1983; amd. Sec. 11, Ch. 208, L. 1995.

17-5-1647. Powers and duties of trustee on default. (1) A trustee appointed under 17-5-1646 may:

(a) by civil action enforce all rights of the noteholders or bondholders, including the right to require the board or eligible government unit to collect rates, charges, and other fees and to collect interest and amortization payments on bonds and notes held by them adequate to carry out a pledge of or an agreement as to the rates, charges, and other fees and of the interest and amortization payments and the right to require the board or eligible government unit to carry out any other agreements with the holders of the notes or bonds and to perform their duties under this part;

(b) bring a civil action upon the notes or bonds;

(c) by civil action require the board or eligible government unit to account as if it were the trustee of an express trust for the holders of the notes or bonds;

(d) by civil action enjoin anything that may be unlawful or in violation of the rights of the holders of the notes or bonds;

(e) declare all the notes or bonds due and payable and, if all defaults are made good, then, with the consent of the holders of 25% of the principal amount of the outstanding notes or bonds, annul the declaration and its consequences.

(2) The trustee, in addition to the powers stated in subsection (1), has all the powers necessary for the exercise of functions specifically set out or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

(3) Before declaring the principal of notes or bonds due and payable, the trustee shall give 30 days' notice in writing to the governor, the attorney general, and the board or eligible government unit defaulting.

History: En. Sec. 29, Ch. 620, L. 1983; amd. Sec. 12, Ch. 208, L. 1995.

Cross-References

Duties of trustees, Title 72, ch. 34, part 1.

Powers of trustees, Title 72, ch. 34, part 3.

17-5-1648. Exemption from execution and sale. All property of the board, other than its revenues or funds received pursuant to this part, is exempt from levy and sale by virtue of an execution, and no execution or other judicial process may issue against such property. A judgment against the board constitutes a charge or lien upon such property.

History: En. Sec. 30, Ch. 620, L. 1983.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

17-5-1649. Annual audit. The board's books and records must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit shall be paid from the board's funds.

History: En. Sec. 31, Ch. 620, L. 1983; amd. Sec. 2, Ch. 308, L. 1985; amd. Sec. 3, Ch. 94, L. 1987.

Cross-References

Audit costs and contracts, Title 5, ch. 13, part 4.

17-5-1650. Annual report. By December 31 of each year, the board shall publish a financial report for distribution to the governor, the legislature, and the public. Distribution to the legislature is accomplished by providing two copies to the legislative services division and a copy to a legislator on request. The report must include a statement of the board's current financial position with respect to its activities under this part, a summary of its activities pursuant to this part during the previous year (including a listing of the eligible governmental securities purchased by the board, a listing of the bonds and notes sold by the board, and a summary of the performance of any other investments of the board's funds received under this part), an estimate of the levels of activities for the next year, and a comparison of the activities during the previous year with the estimates of those activities that were made in the previous annual report.

History: **En. Sec. 32, Ch. 620, L. 1983; amd. Sec. 4, Ch. 94, L. 1987; amd. Sec. 23, Ch. 112, L. 1991; amd. Sec. 20, Ch. 349, L. 1993; amd. Sec. 13, Ch. 208, L. 1995; amd. Sec. 56, Ch. 545, L. 1995.**

17-5-1651. Limitations on board's power. Under this part, the board may not:

(1) make loans of money to any person, firm, or corporation other than an eligible government unit or purchase securities issued by any person, firm, or corporation other than an eligible government unit as provided in this part;

(2) emit bills of credit, accept deposits of money for time or demand deposit, engage in any form or manner in the conduct of any private or commercial banking business, or act as a savings bank or savings and loan association;

(3) be or constitute a bank or trust company within the jurisdiction or under the control of the state banking board, the department of administration, or the comptroller of the currency of the United States department of the treasury;

(4) be or constitute a bank, banker, or dealer in securities within the meaning of or subject to the provisions of any securities, securities exchange, or securities dealers law of the United States or of this state or of any other state.

History: **En. Sec. 33, Ch. 620, L. 1983; amd. Sec. 14, Ch. 208, L. 1995; amd. Sec. 44, Ch. 483, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 483 in (3) near middle after "department of" substituted "administration" for "commerce". Amendment effective July 1, 2001.

Parts 17 through 19 reserved

Part 20

Procurement of Vehicles and Equipment

17-5-2001. *(Temporary)* **Loans to state agencies.** (1) An agency responsible for the procurement and provision of vehicles, automated systems, and equipment using an enterprise fund or an internal service fund, as described in 17-2-102, is authorized to enter into contracts, loan agreements, or other forms of indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund if:

(a) the term of the indebtedness does not exceed the useful life of the items being financed; and

(b) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees and charges approved by the legislature and other available fund revenue, will be sufficient to repay the indebtedness over the proposed term and to maintain the operation of the enterprise.

(2) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed $4.5 million, payable over a term not to exceed 10 years, for financing the cost of an information technology system for the production and maintenance of motor vehicle title and registration records and driver's license records.

(b) For purposes of the financing of the motor vehicle information technology system, loans are payable from the money in the motor vehicle information technology system account as provided in 61-3-550. The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the projected revenue of the motor vehicle information technology system account, based upon the fees approved by the legislature, must be sufficient to repay the indebtedness over the proposed term.

(3) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed $1,120,000, payable over a term not to exceed 7 years, for the acquisition of video gambling automated accounting and reporting system data collection units.

(b) The loan is payable from the department of justice's annual appropriation from the general fund.

(c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the department of justice's base budget appropriation from the general fund must be sufficient to repay the indebtedness with respect to the video gambling data collection units over the proposed term of the loan.

(d) The loan is subject to the risk of nonappropriation. *(Terminates June 30, 2011—sec. 9, Ch. 394, L. 2001.)*

17-5-2001. *(Effective July 1, 2011)* **Loans to state agencies.** An agency responsible for the procurement and provision of vehicles and equipment using an enterprise fund or an internal service fund, as described in 17-2-102, is authorized to enter into contracts, loan agreements, or other forms of indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund if:

(1) the term of the indebtedness does not exceed the useful life of the items being financed; and

(2) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees and charges approved by the legislature and other available fund revenue, will be sufficient to repay the indebtedness over the proposed term and to maintain the operation of the enterprise.

History: En. Sec. 2, Ch. 483, L. 1997; amd. Sec. 2, Ch. 394, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 394 in (1) near beginning of first sentence after "vehicles" inserted "automated systems"; inserted (2) concerning financing of information technology system for vehicle title and registration records and driver's license records; inserted (3) concerning financing for acquisition of video gambling automated accounting and reporting system data collection units; and made minor changes in style. Amendment effective July 1, 2001, and terminates June 30, 2011.

Deposit of Loan Proceeds — Capital Projects Appropriation: Section 5, Ch. 394, L. 2001, provided: "(1) The proceeds of any loan from the board of investments to the department of justice for creation of a new motor vehicle information technology system must be deposited in the capital projects fund.

(2) There is appropriated from the capital projects fund to the department of justice up to $4.5 million for the motor vehicle information technology system described in 17-5-2001.

(3) The department of justice is prohibited from using any of the proceeds from the loan for the motor vehicle information technology system authorized by 17-5-2001 for agency current level operating expenses.

(4) The appropriation continues until the project is completed in accordance with 17-7-212."

Deposit of Loan Proceeds — Appropriation — Contractual Restrictions: Section 6, Ch. 394, L. 2001, provided: "(1) The proceeds of any loan from the board of investments to the department of justice for the acquisition of video gambling automated accounting and reporting system data collection units must be deposited in a state special revenue account.

(2) There is appropriated from the state special revenue account to the department of justice $1,120,000 for the purchase of video gambling automated accounting and reporting system data collection units. The department shall enter into contracts with the owners or operators of machines in which the units are placed that will encumber and allow the expenditure of the appropriation over the term of the loan from the board of investments for the purchase of the units.

(3) The department of justice is prohibited from using any of the proceeds from the loan for the purchase of video gambling automated accounting and reporting system data collection units authorized by 17-5-2001 for agency current level operating expenses."

Part 21
Crossover Refunding Bonds

Part Cross-References

Refunding bonds, Title 17, ch. 5, part 3.

17-5-2101. Definitions. As used in this part, the following definitions apply:

(1) "Bonds" means crossover refunding bonds.

(2) "Crossover date" means the date the proceeds of crossover refunding bonds are pledged to the payment of the obligations to be refunded.

(3) "Governing body" means the board or body that exercises the legislative power of the public body.

(4) "Public body" means any political subdivision of the state and includes but is not limited to a county, city, town, or school district.

History: En. Sec. 1, Ch. 171, L. 1987.

17-5-2102. Crossover refunding bonds authorized. (1) Any public body authorized to issue refunding obligations may issue bonds pursuant to this part without regard to the limitations contained in any other law relating to:

(a) the establishment of an escrow account for the obligations to be refunded;

(b) the giving of a notice of redemption for the obligations to be refunded and redeemed; or

(c) the application of the proceeds of the refunding obligations.

(2) The proceeds of bonds, less any proceeds applied to payment of costs of issuance or refunding, must be deposited in a sinking fund account irrevocably appropriated to the payment of principal of and interest on the refunding obligations until the crossover date. The sinking fund account must be maintained as an escrow account with a suitable financial institution within or outside the state and amounts in it must be invested in securities that are direct obligations of the United States or on which the payment of the principal and interest is guaranteed by the United States. In the resolution authorizing the issuance of the bonds, the governing body may pledge to their payment any source of payment of the obligations to be refunded. In the case of general obligation bonds, property taxes must be levied and appropriated to the sinking fund account in the amounts needed, together with estimated investment income from money in the sinking fund account and any other revenues available upon discharge of the obligations to be refunded, to pay when due the principal of and interest on the bonds. Funds pledged to the credit of the sinking fund for the obligations to be refunded and not required on the crossover date for the payment of principal, premium, or interest on the obligations to be refunded may be appropriated by the public body to the sinking fund account for the bonds.

(3) The public body may pay the reasonable costs and expenses of issuing bonds and of establishing and maintaining the escrow account.

(4) On the crossover date, obligations refunded pursuant to this part are no longer considered outstanding for purposes of any debt limitation if the provisions of subsection (5) are met.

(5) The securities in the escrow account must mature or be callable at the option of the holder on such date, bearing interest at such rate, and payable on such dates as necessary to provide sufficient funds, in addition to any cash retained in the escrow account, to pay when due:

(a) the interest that will accrue on each refunded obligation to its maturity or redemption date, if called for redemption;

(b) the principal of each refunded obligation at maturity or on the redemption date; and

(c) any redemption premium.

History: En. Sec. 2, Ch. 171, L. 1987.

Cross-References

County finance — bonds, Title 7, ch. 7, part 22.
County refunding general obligation bonds, Title 7, ch. 7, part 23.
Municipal bonds and indebtedness, Title 7, ch. 7, part 42.
Municipal refunding general obligation bonds, Title 7, ch. 7, part 43.
School district and county school bonds, Title 20, ch. 9, part 4.

Part 22
Bond Fees

17-5-2201. Fee for issuance of bonds. Except for issuers of general obligation bonds which are payable solely by general fund revenues, each state bond issuer shall, upon issuance of the bonds, pay 30 cents per thousand of bonds to be deposited in the state general fund for the purpose of funding a portion of the comprehensive annual financial report audit.

History: En. Sec. 13, Ch. 190, L. 1987.

CHAPTER 6

DEPOSITS AND INVESTMENTS

Part 1 — Deposits

17-6-101. Deposit of funds in hands of state treasurer.
17-6-102. Insurance on deposits.
17-6-103. Security for deposits of public funds.
17-6-104. Interest on deposits — conformity with federal law.
17-6-105. State treasurer as treasurer of state agencies — deposits of money.

Part 2 — Investments

17-6-201. Unified investment program — general provisions.
17-6-202. Investment funds — general provisions.
17-6-203. Separate investment funds.
17-6-204. Investment of local government funds.
17-6-205 and 17-6-206 reserved.
17-6-207. Investment of state cabin site sales.
17-6-208 through 17-6-210 reserved.
17-6-211. Preference to in-state investment firms — commitment agreement with board of housing.
17-6-212. State purchase of general fund warrants.
17-6-213. Redemption of bonds before maturity.
17-6-214 through 17-6-220 reserved.
17-6-221. Handling securities — custody of mortgages and repurchase agreements.
17-6-222. Repealed.
17-6-223 and 17-6-224 reserved.
17-6-225. Loans to petroleum tank release compensation board.

Part 3 — Montana In-State Investment

17-6-301. Short title.
17-6-302. Definitions.
17-6-303. Purpose of the coal tax trust fund.
17-6-304. Use of the coal tax trust fund for economic development.
17-6-305. Investment of up to twenty-five percent of coal tax trust fund in Montana economy — report by board.
17-6-306. Repealed.
17-6-307. Repealed.
17-6-308. Authorized investments.
17-6-309. Investment preferences.
17-6-310. Repealed.
17-6-311. Limitation on size of investments.
17-6-312. State participation in loans.
17-6-313. Prior commitment of funds.
17-6-314. Rate of return.
17-6-315. Repealed.
17-6-316. Economic development loan — infrastructure tax credit.
17-6-317. Participation by private financial institutions — rulemaking.
17-6-318. Job credit interest rate reduction for business loan participation.
17-6-319. Incentive to financial institution for small business loan participation.
17-6-320 reserved.
17-6-321. Audits.
17-6-322. Report.
17-6-323. Repealed.
17-6-324. Rulemaking authority.
17-6-325. Preference of Montana labor.
17-6-326 through 17-6-330 reserved.
17-6-331. Establishment of a Montana economic development fund.
17-6-332 through 17-6-339 reserved.
17-6-340. Purchase of permanent fund mineral estate.

Part 4 — Microbusiness Development Act

17-6-401. Short title.

17-6-402. Legislative findings and purpose.
17-6-403. Definitions.
17-6-404 and 17-6-405 reserved.
17-6-406. Microbusiness finance program — powers and duties of department.
17-6-407. Microbusiness development loan account and finance program administrative account — criteria — limitations.
17-6-408. Certification of microbusiness development corporations.
17-6-409. Authority to accept funds — funding authorization.
17-6-410 reserved.
17-6-411. Microbusiness advisory council — appointment of members — organization — nonvoting legislative consulting panel.

Part 5 — Job Investment Act (Repealed)

17-6-501. Repealed.
17-6-502. Repealed.
17-6-503. Repealed.
17-6-504. Repealed.
17-6-505. Repealed.
17-6-506 through 17-6-508 reserved.
17-6-509. Repealed.
17-6-510. Repealed.
17-6-511. Repealed.
17-6-512. Repealed.

Part 6 — Montana Tobacco Settlement Trust Fund

17-6-601. Establishment — purpose.
17-6-602. Definitions.
17-6-603. Montana tobacco settlement trust fund — state special revenue fund account.

Part 7 — Montana In-State Investment in Electrical Generation Facilities

17-6-701. Purpose.
17-6-702. Definitions.
17-6-703. Qualification date.
17-6-704. Investment criteria.
17-6-705. Term of contract — pledge.

Part 1

Deposits

Part Cross-References

Deposit and investment of public funds by county, city, or town, Title 7, ch. 6, part 2.

17-6-101. Deposit of funds in hands of state treasurer. (1) Under the direction of the board of investments, the state treasurer shall deposit public money in the treasurer's possession and under the treasurer's control in solvent banks, building and loan associations, savings and loan associations, and credit unions located in the state, except as otherwise provided by law, subject to national supervision or state examination.

(2) If needed financial services are not available through solvent banks, building and loan associations, savings and loan associations, and credit unions located in the state, the state treasurer may deposit public money in out-of-state financial institutions subject to national supervision.

(3) The state treasurer shall deposit funds in banks, building and loan associations, savings and loan associations, and credit unions in amounts that may be designated by the board of investments and shall withdraw deposits when instructed to by the board of investments.

(4) When money has been deposited under the board of investments and in accordance with the law, the state treasurer is not liable for loss on account of any deposit occurring from any cause other than the treasurer's own neglect or fraud.

(5) The state treasurer shall withdraw all deposits or any part of the deposits from time to time to pay and discharge the legal obligations of the state presented to the treasurer in accordance with the law.

(6) The state treasurer may contract with a financial institution to provide general depository banking services. The cost of contracting for banking services is statutorily appropriated, as provided in 17-7-502, from the general fund.

History: En. Sec. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909; re-en. Sec. 182, R.C.M. 1921; amd. Sec. 1, Ch. 85, L. 1923; amd. Sec. 1, Ch. 80, L. 1929; amd. Sec. 1, Ch. 62, L. 1935; re-en. Sec. 182, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1963; amd. Sec. 1, Ch. 259, L. 1969; amd. Sec. 1, Ch. 298, L. 1973; amd. Sec. 1, Ch. 14, L. 1974; R.C.M. 1947, 79-301(part); amd. Sec. 10, Ch. 421, L. 1985; amd. Sec. 2, Ch. 107, L. 1993; amd. Sec. 1, Ch. 131, L. 1993.

Cross-References

State Treasurer — general duties, 17-1-111.
Securities lending program, 17-1-113.
Giving security for deposit prohibited — exceptions, 32-1-447.
Authority to receive state deposits, 32-3-401.

17-6-102. Insurance on deposits. (1) Deposits in excess of the amount insured by the federal deposit insurance corporation or the national credit union administration may not be made unless the bank, building and loan association, savings and loan association, or credit union first delivers to the state treasurer or deposits in trust with some solvent bank, as security therefor, bonds or other obligations of the kinds listed in 17-6-103, having a market value equal to at least 50% of the amount of the deposits in excess of the amount insured. The board of investments may require security of a greater value. When negotiable securities are placed in trust, the trustee's receipt may be accepted instead of the actual securities if the receipt is in favor of the state treasurer, successors in office, and the state of Montana and the form of receipt and the trustee have been approved by the board of investments.

(2) Any bank, building and loan association, savings and loan association, or credit union pledging securities as provided in this section may at any time substitute securities for any part of the securities pledged. The substituted collateral must conform to 17-6-103 and have a market value at least sufficient for compliance with subsection (1). If the substituted securities are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the state treasurer and to the depository financial institution a receipt specifically describing and identifying both the securities substituted and those released and returned to the depository financial institution.

History: En. Sec. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909; re-en. Sec. 182, R.C.M. 1921; amd. Sec. 1, Ch. 85, L. 1923; amd. Sec. 1, Ch. 80, L. 1929; amd. Sec. 1, Ch. 62, L. 1935; re-en. Sec. 182, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1963; amd. Sec. 1, Ch. 259, L. 1969; amd. Sec. 1, Ch. 298, L. 1973; amd. Sec. 1, Ch. 14, L. 1974; R.C.M. 1947, 79-301(2), (4); amd. Sec. 2, Ch. 158, L. 1979; amd. Sec. 11, Ch. 421, L. 1985; amd. Sec. 29, Ch. 10, L. 1993.

Cross-References

Giving security for deposit prohibited — exceptions, 32-1-447.
Federal Deposit Insurance Corporation, Title 32, ch. 1, part 6.
State-chartered building and loan association — equality of rights, 32-2-111.
Credit unions — insurance on share accounts, 32-3-611.

17-6-103. Security for deposits of public funds. The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:

(1) direct obligations of the United States;

(2) securities as to which the payment of principal and interest is guaranteed by the United States;

(3) securities issued or fully guaranteed by the following agencies of the United States or their successors, whether or not guaranteed by the United States:

(a) commodity credit corporation;
(b) federal intermediate credit banks;
(c) federal land bank;
(d) bank for cooperatives;
(e) federal home loan banks, including a letter of credit from a federal home loan bank;
(f) federal national mortgage association;
(g) government national mortgage association;

(h) small business administration;

(i) federal housing administration; and

(j) federal home loan mortgage corporation;

(4) securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

(5) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;

(6) revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faith and credit of the subdivision or when the revenue pledged to the payment of the bonds is derived from a water or sewer system and the issuer has covenanted to establish and maintain rates and charges for the system in an amount sufficient to produce revenue equal to at least 125% of the average annual principal and interest due on all bonds payable from the revenue during the outstanding term of the bonds;

(7) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state issued in evidence of claims in an amount that, with all other claims on the same fund, does not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;

(8) obligations of housing authorities of the state secured by a pledge of annual contributions or by a loan agreement made by the United States or any agency of the United States providing for contributions or a loan sufficient with other funds pledged to pay the principal of and interest on the obligations when due. The bonds and other obligations made eligible for investment in 7-15-4505 and 32-1-424(1)(a) may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required or may by law be deposited as security.

(9) general obligation bonds of other states and of municipalities, counties, and school districts of other states;

(10) undertaking or guarantees issued by a surety company authorized to do business in the state;

(11) first mortgages and trust indentures on real property. The depository shall, on a quarterly basis, certify to the state treasurer that sufficient first mortgages and trust indentures on real property are available and segregated to secure deposits of public funds. The board of investments shall determine the amount of security required.

(12) bonds issued pursuant to Title 7, chapter 12, parts 21, 41, and 42;

(13) bonds issued pursuant to Title 90, chapter 6, part 1;

(14) revenue bonds issued by any unit of the university system of the state of Montana; and

(15) advance refunded bonds secured by direct obligations of the United States treasury held in irrevocable escrow.

History: Ap. p. Sec. 4, Ch. 298, L. 1973; amd. Sec. 2, Ch. 160, L. 1975; amd. Sec. 1, Ch. 92, L. 1977; Sec. 79-307, R.C.M. 1947; Ap. p. Sec. 2, Ch. 5, Ex. L. 1933; amd. Sec. 2, Ch. 37, L. 1935; re-en. Sec. 5309.36, R.C.M. 1935; amd. Sec. 109, Ch. 431, L. 1975; Sec. 35-145, R.C.M. 1947; R.C.M. 1947, 35-145, 79-307; amd. Sec. 3, Ch. 158, L. 1979; amd. Sec. 1, Ch. 185, L. 1979; amd. Sec. 1, Ch. 437, L. 1979; amd. Sec. 5, Ch. 540, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 62, L. 1985; amd. Sec. 4, Ch. 57, L. 1987; amd. Sec. 56, Ch. 370, L. 1987; amd. Sec. 1, Ch. 137, L. 1989; amd. Sec. 2, Ch. 201, L. 1989; amd. Sec. 10, Ch. 179, L. 1995; amd. Sec. 96, Ch. 42, L. 1997; amd. Sec. 1, Ch. 158, L. 1999.

Cross-References

Deposit security, 7-6-207.
Investment of certain money in county warrants, 7-6-2701.
Call for payment of warrants drawing interest, 7-6-4502.
Investment of municipal money in city or town warrants, 7-6-4603.
Authorization for additional indebtedness for water or sewer systems, 7-7-108.
County general obligation bonds, Title 7, ch. 7, part 22.
Municipal general obligation bonds, Title 7, ch. 7, part 42.

Municipal revenue bonds, Title 7, ch. 7, part 44.
Public obligations as authorized security, 17-5-1123.
Surety defined, 28-11-401.
What real property may be mortgaged — debts secured, 71-1-201.
Trust indenture considered to be mortgage on real property, 71-1-305.

17-6-104. Interest on deposits — conformity with federal law. (1) The board of investments may require the payment of quarterly annual interest on daily balances of collected funds at a rate to be agreed upon between the depository banks, building and loan associations, savings and loan associations, credit unions, and the board of investments. The rate must be fixed semiannually during the months of July and January of each year.

(2) The interest requirements on deposits of public funds made under the laws of the state of Montana or otherwise by county or city treasurers or town clerks may not at any time be in violation of any act of the congress of the United States or of any rule or regulation of the federal reserve system, federal home loan bank system, or the federal deposit insurance corporation, national credit union administration, or any other fiscal agency of the United States of which the banks, building and loan associations, savings and loan associations, or credit unions of this state may be members or debtors.

History: (1)En. Sec. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909; re-en. Sec. 182, R.C.M. 1921; amd. Sec. 1, Ch. 85, L. 1923; amd. Sec. 1, Ch. 80, L. 1929; amd. Sec. 1, Ch. 62, L. 1935; re-en. Sec. 182, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1963; amd. Sec. 1, Ch. 259, L. 1969; amd. Sec. 1, Ch. 298, L. 1973; amd. Sec. 1, Ch. 14, L. 1974; Sec. 79-301, R.C.M. 1947; (2)En. Sec. 1, Ch. 104, L. 1937; amd. Sec. 2, Ch. 14, L. 1974; Sec. 79-302, R.C.M. 1947; R.C.M. 1947, 79-301(part), 79-302; amd. Sec. 6, Ch. 540, L. 1979; amd. Sec. 12, Ch. 421, L. 1985; amd. Sec. 30, Ch. 10, L. 1993.

Cross-References

Banks allowed to join federal reserve bank, 32-1-373.
Claims — order of payment — priorities, 32-1-534.

17-6-105. State treasurer as treasurer of state agencies — deposits of money. (1) The state treasurer is designated the treasurer of every state agency and institution.

(2) All state agencies and institutions shall deposit all money, credits, evidences of indebtedness, and securities either:

(a) in banks, building and loan associations, savings and loan associations, or credit unions located in the city or town in which the agencies and institutions are situated, if there is a qualified bank, building and loan association, savings and loan association, or credit union in the city or town as designated by the state treasurer with the approval of the board of investments; or

(b) with the state treasurer.

(3) Each bank, building and loan association, savings and loan association, or credit union shall pledge securities sufficient to cover 50% of the deposits at all times.

(4) The deposits must be made in the name of the state treasurer, must be subject to withdrawal at his option, and must draw interest as other state money, in accordance with the provisions of this part.

(5) Nothing in this chapter shall impair or otherwise affect any covenant entered into pursuant to law by any agency or institution respecting the segregation, deposit, and investment of any revenues or funds pledged for the payment and security of bonds or other obligations authorized to be issued by the agency, and all the funds must be deposited and invested in accordance with the covenants notwithstanding any provision of this chapter.

(6) Except as otherwise provided by law, all money, credits, evidences of indebtedness, and securities received by a state agency or institution must be deposited either with the state treasurer or in a depository approved by the state treasurer each day when the accumulated amount of coin and currency requiring deposit exceeds $100 or total collections exceed $500. All money, credits, evidences of indebtedness, and securities collected must be deposited at least weekly.

(7) Notwithstanding any other provision of state law, when it is determined to be in the best financial interest of the state, the department may require any money received or collected by any agency of the state to be immediately deposited to the credit of the state treasurer.

History: (1) thru (6)En. Sec. 1, Ch. 112, L. 1921; re-en. Sec. 192, R.C.M. 1921; amd. Sec. 1, Ch. 157, L. 1931; re-en. Sec. 192, R.C.M. 1935; amd. Sec. 9, Ch. 147, L. 1963; amd. Sec. 2, Ch. 298, L. 1973; amd. Sec. 3,

Ch. 14, L. 1974; amd. Sec. 4, Ch. 286, L. 1977; Sec. 79-306, R.C.M. 1947; (7)En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971, amd. Sec. 50, Ch. 326, L. 1974; Sec. 82-110, R.C.M. 1947; R.C.M. 1947, 79-306, 82-110(5); amd. Sec. 4, Ch. 158, L. 1979; amd. Sec. 13, Ch. 421, L. 1985; amd. Sec. 1, Ch. 339, L. 1991.

Cross-References

Unified investment program — general provisions, 17-6-201.

Investment funds — general provisions, 17-6-202.

Part 2
Investments

Part Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

17-6-201. *(Temporary)* **Unified investment program — general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires an investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation.

(b) Other public funds may not be invested in private corporate capital stock. “Private corporate capital stock” means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring real property obtained through investments. Prior to the transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a qualified appraiser.

(b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund.

17-6-201. *(Effective January 1, 2003, on occurrence of contingency)* **Unified investment program — general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires an investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) Retirement funds may be invested in common stocks of any corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring real property obtained through investments. Prior to the transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a qualified appraiser.

(b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund.

History: (1), (2), (5) thru (7)En. Sec. 5, Ch. 298, L. 1973; amd. Sec. 1, Ch. 203, L. 1977; Sec. 79-308, R.C.M. 1947; (3), (4)En. 82A-204 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 90, Ch. 326, L. 1974; Sec. 82A-204, R.C.M. 1947; R.C.M. 1947, 79-308, 82A-204(4); amd. Sec. 1, Ch. 395, L. 1981; amd. Sec. 11, Ch. 281, L. 1983; amd. Sec. 19, Ch. 677, L. 1983; amd. Sec. 2, Ch. 183, L. 1985; amd. Sec. 3, Ch. 418, L. 1985; amd. Sec. 1, Ch. 158, L. 1987; amd. Sec. 1, Ch. 335, L. 1987; amd. Sec. 12, Ch. 581, L. 1987; amd. Sec. 1, Ch. 291, L. 1991; amd. Sec. 1, Ch. 46, L. 1993; amd. Sec. 1, Ch. 331, L. 1993; amd. Sec. 2, Ch. 37, Sp. L. November 1993; amd. Sec. 32, Ch. 18, L. 1995; amd. Sec. 1, Ch. 32, L. 1997; amd. Sec. 25, Ch. 422, L. 1997; amd. Sec. 12, Ch. 532, L. 1997; amd. Sec. 3, Ch. 549, L. 1997; amd. Sec. 2, Ch. 330, L. 1999; amd. Sec. 3, Ch. 471, L. 1999; amd. Sec. 5, Ch. 418, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 418 deleted former (2)(b) that read: "(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation"; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 13(2), Ch. 418, L. 2001, provided: "[Section 5] [17-6-201] is effective January 1, 2003, if Senate Bill No. 493 is approved by the electorate."

Cross-References

Accurate accounting records and interaccount loans, 17-2-107.
U.C.C. — secured transactions, Title 30, ch. 9A.
Proceedings in foreclosure suits, 71-1-222.

17-6-202. Investment funds — general provisions. (1) For each treasury fund account into which state funds are segregated by the department of administration pursuant to 17-2-106, individual transactions and totals of all investments shall be separately recorded to the extent directed by the department.

(2) However, the securities purchased and cash on hand for all treasury fund accounts not otherwise specifically designated by law or by the provisions of a gift, donation, grant, legacy, bequest, or devise from which the fund account originates to be invested shall be pooled in an account to be designated "treasury cash account" and placed in one of the investment funds designated in 17-6-203. The share of the income for this account shall be credited to the general fund.

(3) If, within the list in 17-6-203 of separate investment funds, more than one investment fund is included which may be held jointly with others under the same separate listing, all investments purchased for that separate investment fund shall be held jointly for all the accounts participating therein, which shall share all capital gains and losses and income pro rata.

History: En. Sec. 6, Ch. 298, L. 1973; amd. Sec. 7, Ch. 540, L. 1977; R.C.M. 1947, 79-309(part).

Cross-References

Accurate accounting records and interaccount loans, 17-2-107.

17-6-203. Separate investment funds. Separate investment funds must be maintained as follows:

(1) the permanent funds, including all public school funds and funds of the Montana university system and other state institutions of learning referred to in Article X, sections 2 and 10, of the Montana constitution. The principal and any part of the principal of each fund constituting the Montana permanent fund type are subject to deposit at any time when due under the statutory provisions applicable to the fund and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular fund arises.

(2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to each retirement or insurance system maintained by the state, including:

(a) the highway patrol officers' retirement system described in Title 19, chapter 6;

(b) the public employees' retirement system described in Title 19, chapter 3;

(c) the game wardens' and peace officers' retirement system described in Title 19, chapter 8;

(d) the teachers' retirement system described in Title 19, chapter 20; and

(e) the workers' compensation program described in Title 39, chapter 71, part 23;

(3) a pooled investment fund, including all other accounts within the treasury fund structure established by 17-2-102;

(4) the fish and wildlife mitigation trust fund established by 87-1-611;

(5) a fund consisting of gifts, donations, grants, legacies, bequests, devises, and other contributions made or given for a specific purpose or under conditions expressed in the gift, donation, grant, legacy, bequest, devise, or contribution to be observed by the state of Montana. If a gift, donation, grant, legacy, bequest, devise, or contribution permits investment and is not otherwise restricted by its terms, it may be treated jointly with other gifts, donations, grants, legacies, bequests, devises, or contributions.

(6) a fund consisting of coal severance taxes allocated to the coal severance tax trust fund under Article IX, section 5, of the Montana constitution. The principal of the coal severance tax trust fund is permanent. If the legislature appropriates any part of the principal of the coal severance tax trust fund by a vote of three-fourths of the members of each house, the appropriation or investment may create a gain or loss in the principal.

(7) a Montana tobacco settlement trust fund established in accordance with Article XII, section 4, of the Montana constitution and Title 17, chapter 6, part 6; and

(8) additional investment funds that are expressly required by law or that the board of investments determines are necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular source.

History: Ap. p. Sec. 6, Ch. 298, L. 1973; amd. Sec. 7, Ch. 540, L. 1977; Sec. 79-309, R.C.M. 1947; Ap. p. Sec. 12, Ch. 70, L. 1929; re-en. Sec. 5668.30, R.C.M. 1935; amd. Sec. 21, Ch. 147, L. 1963; amd. Sec. 37, Ch. 100, L. 1973; Sec. 79-1212, R.C.M. 1947; R.C.M. 1947, 79-309(part), 79-1212; amd. Sec. 12, Ch. 281, L. 1983; amd. Sec. 4, Ch. 418, L. 1985; amd. Sec. 6, Ch. 445, L. 1987; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 12, Ch. 223, L. 1997; amd. Sec. 9, Ch. 34, L. 2001; amd. Sec. 4, Ch. 467, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 34 in (1) near beginning of first sentence and in second sentence substituted reference to permanent fund for reference to nonexpendable trust fund and near middle of second sentence after "subject to" substituted "deposit" for "payment"; in (2)(e) at beginning substituted "workers' compensation program" for "industrial accident insurance program"; in (6) near end substituted "the appropriation or investment" for "such liquidation"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 467 inserted (7) regarding establishment of the Montana tobacco settlement trust fund; and made minor changes in style. Amendment effective April 30, 2001.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Retroactive Applicability: Section 7, Ch. 467, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to proceeds from the tobacco settlement occurring on or after January 1, 2001."

Cross-References

Disposal of severance taxes, 15-35-108.

Coal severance tax bonds — renewable resource development, Title 17, ch. 5, part 7.

17-6-204. Investment of local government funds. (1) The governing body of any city, county, school district, or other local government unit or political subdivision having funds which are available for investment and are not required by law or by any covenant or agreement with bondholders or others to be segregated and invested in a different manner may direct its treasurer to remit such funds to the state treasurer for investment under the direction of the board of investments as part of the pooled investment fund.

(2) A separate account, designated by name and number for each such participant in the fund, shall be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report shall be furnished to each participant having a beneficial interest in the pooled investment fund, showing the changes in investments made during the preceding month. Details of any investment transaction shall be furnished to any participant upon request.

(3) The principal and accrued income, and any part thereof, of each and every account maintained for a participant in the pooled investment fund shall be subject to payment at any time from the fund upon request. Accumulated income shall be remitted to each participant at least annually.

(4) No order or warrant shall be issued upon any account for a larger amount than the principal and accrued income of the account to which it applies, and if any such order or warrant is issued, the participant receiving it shall reimburse the excess amount to the fund from any funds not otherwise appropriated, and the state treasurer shall be liable under his official bond for any amount not so reimbursed.

History: En. Sec. 8, Ch. 298, L. 1973; R.C.M. 1947, 79-311.

Cross-References

Maintenance of fund and account records and interfund loans, 17-2-105.
Accurate accounting records and interaccount loans, 17-2-107.

17-6-205 and 17-6-206 reserved.

17-6-207. Investment of state cabin site sales. The board of investments may purchase from approved lenders contracts for deed or mortgages for cabin sites on state trust land for the trust and legacy fund.

History: En. Sec. 2, Ch. 488, L. 1991.

Cross-References

Cabin site sales, 77-2-318.

17-6-208 through 17-6-210 reserved.

17-6-211. Preference to in-state investment firms — commitment agreement with board of housing. (1) The board of investments shall endeavor to direct its portion of the state's investment business to those investment firms and/or financial institutions which maintain offices in the state and thereby make contributions to the state economy. Further, due consideration shall be given to investments which will benefit the smaller communities in the state. The state's investment business will be directed to out-of-state firms only when there is a distinct economic advantage to the state of Montana.

(2) The board may enter into a commitment agreement with the board of housing at the time of an issue of bonds or notes by the board of housing providing for the purchase at a specified future date, not to exceed 15 years from the date of the issue, of all or any portion of the amount of mortgage loans purchased with the proceeds of the issue. The board of investments may charge reasonable fees for any commitment and may agree to purchase the mortgage loans on terms that in the judgment of the board of investments provide a fair market rate of return to the purchasers.

History: En. Sec. 7, Ch. 298, L. 1973; amd. Sec. 1, Ch. 92, L. 1974; amd. Sec. 1, Ch. 228, L. 1974; amd. Sec. 1, Ch. 316, L. 1977; R.C.M. 1947, 79-310; amd. Sec. 1, Ch. 81, L. 1979; amd. Sec. 1, Ch. 180, L. 1979; amd. Sec. 2, Ch. 395, L. 1981; amd. Sec. 1, Ch. 358, L. 1983; amd. Sec. 1, Ch. 360, L. 1983; amd. Sec. 1, Ch. 387, L. 1983; amd. Sec. 20, Ch. 677, L. 1983; amd. Sec. 5, Ch. 418, L. 1985; amd. Sec. 14, Ch. 421, L. 1985.

Cross-References

Investment of fund, 19-2-504.
Financial administration of money, 19-20-501.
U.C.C. — negotiable instruments, Title 30, ch. 3.
U.C.C. — investment securities, Title 30, ch. 8.
Authority to receive state deposits, 32-3-401.
Mortgages of real property, Title 71, ch. 1, part 2.
Board of Housing — financing of housing, Title 90, ch. 6, part 1.
Montana Health Facility Authority bonds — legal investment, 90-7-113.

17-6-212. State purchase of general fund warrants. (1) The state reserves a preference right, prior to the right of any person, company, or corporation, to purchase state general fund warrants issued with funds under the control of the board of investments and subject to investment.

(2) When the board of investments has under its control any funds subject to investment that in its judgment it would be advantageous to invest in state general fund warrants and there are not sufficient funds in the state general fund to pay warrants issued against the fund at the time that they are issued and presented for payment, it shall authorize and direct the state treasurer to purchase state general fund warrants, designating the fund or funds to be invested and fixing the amount or amounts to be invested. State general fund warrants registered by the state treasurer pursuant to 17-8-304(1) and purchased by the board of investments must bear interest at a rate determined by the board. When determining the interest rate, the board shall consider:

(a) the duration of the investment by estimating the time at which the warrants will be redeemed pursuant to 17-8-304(1); and

(b) the interest rate of the investments liquidated to provide the funds to purchase the warrants.

(3) The state treasurer shall attach to or stamp, write, or print upon each general fund warrant issued after the receipt of notice, until warrants totaling the amounts designated have been issued, a notice that the state will exercise its preference right to purchase the warrant.

(4) The state treasurer shall, when the marked warrant is presented, pay it out of the proper fund as designated by the board, and the warrant purchased must be registered as other state warrants and must bear interest as provided by law.

(5) When the designated amounts have been invested, the department shall notify the board of investments, which shall issue orders for warrants to be issued in favor of the treasurer.

History: En. Sec. 89, Ch. 147, L. 1909; re-en. Sec. 1912, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1927; re-en. Sec. 1912, R.C.M. 1935; amd. Sec. 33, Ch. 326, L. 1974; R.C.M. 1947, 79-1101; amd. Sec. 1, Ch. 40, L. 1995; amd. Sec. 19, Ch. 325, L. 1995; amd. Sec. 97, Ch. 42, L. 1997; amd. Sec. 8, Ch. 48, L. 1997.

Cross-References

Warrants, Title 17, ch. 8, part 3.

17-6-213. Redemption of bonds before maturity. (1) The board of investments shall permit any school district, town, city, or county to pay and redeem one or more of its bonds held by the state for the credit of any fund under the investment administration of the board of investments at any time before maturity.

(2) In calculating the unpaid interest accrued on any bond or bonds at the time of payment and redemption, interest for a fractional month shall be calculated and collected for a full month.

(3) Payment and redemption of bonds shall be made at the office of the state treasurer unless the bonds by their own terms and provisions are made payable at some other place and payment at his office would be disadvantageous to the redemptioner. When bonds have been so paid and redeemed, the state treasurer shall effectually cancel the bonds and the attached coupons by perforation or otherwise and mail to the proper treasurer together with his receipt.

(4) This section does not authorize or permit any school district, town, city, or county to issue refunding bonds for the purpose of paying and redeeming any bond or bonds held by the state before the optional or redeemable date therein stated or to grant the right to pay any bond or bonds held by the state before the optional or redeemable date from the proceeds of refunding bonds.

History: En. Sec. 2, Ch. 33, L. 1907; re-en. Sec. 2202, Rev. C. 1907; amd. Sec. 91, Ch. 147, L. 1909; re-en. Sec. 1916, R.C.M. 1921; amd. Sec. 1, Ch. 70, L. 1925; amd. Sec. 1, Ch. 3, L. 1929; re-en. Sec. 1916, R.C.M. 1935; amd. Sec. 36, Ch. 326, L. 1974; R.C.M. 1947, 79-1105.

Cross-References

Redemption of bonds, 7-7-2207.
Redemption of bonds — optional method, 17-5-105.
Redemption of bonds — investment of debt service fund money, 20-9-441.

17-6-214 through 17-6-220 reserved.

17-6-221. Handling securities — custody of mortgages and repurchase agreements. (1) Securities may be placed in safekeeping with banks subject to national supervision or Montana state examination, and a safekeeping receipt may be accepted in lieu of the actual securities.

(2) Custody and control of repurchase agreements and mortgages shall be accomplished by the receipt of a confirmation of purchase.

History: En. Sec. 440, Pol. C. 1895; re-en. Sec. 179, Rev. C. 1907; re-en. Sec. 174, R.C.M. 1921; Cal. Pol. C. Sec. 452; re-en. Sec. 174, R.C.M. 1935; amd. Sec. 8, Ch. 147, L. 1963; amd. Sec. 1, Ch. 152, L. 1971; amd. Sec. 1, Ch. 269, L. 1973; R.C.M. 1947, 79-201(8).

Cross-References

Examination and supervision by Department, 32-1-211.

17-6-222. Repealed. Sec. 1, Ch. 304, L. 1979.

History: En. Sec. 15, Ch. 70, L. 1929; re-en. Sec. 5668.33, R.C.M. 1935; amd. Sec. 38, Ch. 100, L. 1973; amd. Sec. 10, Ch. 298, L. 1973; R.C.M. 1947, 79-1215.

17-6-223 and 17-6-224 reserved.

17-6-225. Loans to petroleum tank release compensation board. (1) The board of investments may loan funds to the petroleum tank release compensation board to cover temporary cash shortfalls. The total of all loans may not exceed the greater of $15 million or 80% of the fees that the office of budget and program planning projects will be collected under 75-11-314 during the next 3 fiscal years. A loan must be amortized, based on projected fee revenue, over a period of not more than 10 years.

(2) The board shall establish the interest rate on the loan, considering the security and the term of the loan.

History: En. Sec. 1, Ch. 115, L. 1997.

Part 3
Montana In-State Investment

17-6-301. Short title. This part may be cited as the "Montana In-State Investment Act of 1983".

History: En. Sec. 1, Ch. 677, L. 1983.

17-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.

(3) "Clean and healthful environment" means an environment that is relatively free from pollution that threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(4) "Department" means the department of commerce provided for in 2-15-1801.

(5) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

(6) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

(7) "Loan participation" means loans or portions of loans bought from a financial institution and does not include the purchase of debentures issued by a capital company.

(8) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana.

(9) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenue in the future to the people of Montana, either directly or indirectly.

(10) "Montana economy" means any business activity in the state of Montana, including those that continue existing jobs or create new jobs in Montana.

(11) "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund.

History: En. Sec. 2, Ch. 677, L. 1983; amd. Sec. 1, Ch. 408, L. 1985; amd. Sec. 1, Ch. 124, L. 1987; amd. Sec. 57, Ch. 370, L. 1987; amd. Sec. 13, Ch. 581, L. 1987; amd. Sec. 5, Ch. 589, L. 1991; amd. Sec. 4, Ch. 549, L. 1997.

17-6-303. Purpose of the coal tax trust fund. The people of Montana establish that the intent of the permanent coal tax trust fund, as created by Article IX, section 5, of the Montana constitution, is:

(1) to compensate future generations for the loss of a valuable and depletable resource and to meet any economic, social, and environmental impacts caused by coal development not otherwise provided for by other coal tax sources; and

(2) to develop a stable, strong, and diversified economy which meets the needs of Montana residents both now and in the future while maintaining and improving a clean and healthful environment as required by Article IX, section 1, of the Montana constitution.

History: En. Sec. 1, I.M. No. 95, approved Nov. 2, 1982.

Cross-References

Coal severance tax trust funds, 17-5-703.

17-6-304. Use of the coal tax trust fund for economic development. Objectives for investment of the permanent coal tax trust fund are to diversify, strengthen, and stabilize the Montana economy and to increase Montana employment and business opportunities while maintaining and improving a clean and healthful environment.

History: En. Sec. 2, I.M. No. 95, approved Nov. 2, 1982.

17-6-305. Investment of up to twenty-five percent of coal tax trust fund in Montana economy — report by board. (1) Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to 25% of the permanent coal tax trust fund established in 17-6-203(6) in the Montana economy, with special emphasis on investments in new or expanding locally owned enterprises. Investments made pursuant to this section do not include investments made pursuant to 17-6-309(2). For purposes of calculating the 25% of the permanent coal tax trust fund, the board shall include all funds listed in 17-5-703(1). The portion of the permanent coal tax trust fund contained in portfolios formerly administered by the Montana board of science and technology development is included in the 25% of the trust fund allocated to the board for in-state investment under this section.

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy must be considered.

(3) The legislature may provide additional procedures to implement this section.

(4) The board shall include a report on the investments made under this section as a part of the information required by 17-7-111.

History: En. Sec. 3, I.M. No. 95, approved Nov. 2, 1982; amd. Sec. 1, Ch. 338, L. 1985; amd. Sec. 6, Ch. 418, L. 1985; amd. Sec. 14, Ch. 16, L. 1991; amd. Sec. 6, Ch. 589, L. 1991; amd. Sec. 16, Ch. 787, L. 1991; amd. Sec. 21, Ch. 349, L. 1993; amd. Sec. 1, Ch. 34, L. 1995; amd. Sec. 1, Ch. 477, L. 1995; amd. Sec. 5, Ch. 549, L. 1997; amd. Sec. 8, Ch. 307, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 307 in (1) in fourth sentence near middle after "development" deleted "and administered by the department pursuant to part 5 of this chapter". Amendment effective July 1, 2001.

17-6-306. Repealed. Sec. 19, Ch. 589, L. 1991.

History: En. Sec. 3, Ch. 677, L. 1983; amd. Sec. 2, Ch. 338, L. 1985; amd. Sec. 7, Ch. 445, L. 1987; amd. Sec. 17, Ch. 787, L. 1991.

17-6-307. Repealed. Sec. 18, Ch. 581, L. 1987.

History: En. Sec. 4, Ch. 677, L. 1983.

17-6-308. Authorized investments. (1) Except as provided in subsections (2) through (4) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development. The board shall establish an appropriate repayment schedule for all outstanding research and development loans made to the university system. The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios, except agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. The board shall administer the agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. As loans made by the former Montana board of science and technology development are repaid, the board shall deposit the

proceeds or loans made from the coal severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7% interest.

(4) The board shall allow the Montana facility finance authority to administer $15 million of the permanent coal tax trust fund for capital projects. Until the authority makes a loan pursuant to the provisions of Title 90, chapter 7, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans for capital projects made pursuant to this subsection are repaid, the principal and interest payments on the loans must be deposited in the coal severance tax permanent fund until all principal and interest have been repaid. The board and the authority shall calculate the amount of the interest charge. Individual loan amounts may not exceed 10% of the amount administered under this subsection.

(5) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations.

(6) All repayments of proceeds pursuant to subsection (3) of investments made from the coal severance tax trust fund must be deposited in the coal severance tax permanent fund.

History: En. Sec. 5, Ch. 677, L. 1983; amd. Sec. 7, Ch. 418, L. 1985; amd. Sec. 3, Ch. 640, L. 1985; amd. Sec. 22, Ch. 316, L. 1989; amd. Sec. 1, Ch. 251, L. 1991; amd. Sec. 7, Ch. 589, L. 1991; amd. Secs. 2, 12, Ch. 594, L. 1991; amd. Sec. 2, Ch. 331, L. 1993; amd. Sec. 10, Ch. 559, L. 1995; amd. Secs. 6, 7, Ch. 549, L. 1997; amd. Sec. 1, Ch. 66, L. 1999; amd. Sec. 1, Ch. 160, L. 1999; amd. Sec. 4, Ch. 137, L. 2001; amd. Sec. 9, Ch. 307, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 137 in (4) in first sentence substituted "Montana facility finance authority" for "Montana health facility authority". Amendment effective July 1, 2001.

Chapter 307 in (3) deleted former fifth sentence that read: "Until the department makes a loan pursuant to the provisions of part 5 of this chapter, the $915,000 in funds under its administration must be invested by the board pursuant to the provisions of 17-6-201" and near beginning of fifth sentence after "made" substituted "by the former Montana board of science and technology development" for "pursuant to part 5 of this chapter". Amendment effective July 1, 2001.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

17-6-309. Investment preferences. (1) Subject to the provisions of subsection (2), in deciding which of several investments of equal or comparable security and return are to be made when sufficient funds are not available to fund all possible investments, the board shall give preference to the business investments that:

(a) assist employee-owned enterprises in providing new jobs or in preserving existing jobs for Montana residents or in otherwise contributing to the long-term benefit of the Montana economy, including raising the per capita income of Montana jobholders;

(b) are for locally owned enterprises that are either expanding or establishing new operations;

(c) provide jobs that will be substantially filled by current Montana residents as opposed to providing jobs that will be filled by nonresidents coming into the state to fill such jobs;

(d) maintain and improve a clean and healthful environment, with emphasis on energy efficiency;

(e) encourage or benefit the processing, refining, marketing, and innovative use and promotion of Montana's agricultural products; or

(f) benefit small- and medium-sized businesses as defined in rules adopted by the board.

(2) The board may make a loan to enhance economic development and create jobs in the basic sector of the economy, as defined by the board by rule, if the loan will result in the creation of a business estimated to employ at least 15 people in Montana on a permanent, full-time basis or result in the expansion of a business estimated to employ at least an additional 15 people in Montana on a permanent, full-time basis or raise salaries, wages, and business incomes of existing employees and employers.

History: En. Sec. 6, Ch. 677, L. 1983; amd. Sec. 2, Ch. 408, L. 1985; amd. Sec. 2, Ch. 477, L. 1995; amd. Sec. 1, Ch. 64, L. 1999.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

17-6-310. Repealed. Sec. 3, Ch. 46, L. 1993.

History: (1)En. Sec. 3(3), I.M. No. 95, approved Nov. 2, 1982; (2)En. Sec. 7, Ch. 677, L. 1983; amd. Sec. 2, Ch. 124, L. 1987; amd. Sec. 8, Ch. 589, L. 1991; amd. Secs. 4, 12, Ch. 594, L. 1991; amd. Sec. 5, Ch. 12, Sp. L. January 1992; amd. Sec. 4, Ch. 354, L. 1993.

17-6-311. Limitation on size of investments. (1) Except as provided in subsection (2) and this subsection, an investment may not be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 10% of the permanent coal tax trust fund. If an investment results in any one business enterprise or person incurring a debt in excess of 6% of the permanent coal tax trust fund, at least 30% of the debt incurred for the project or enterprise for the coal tax investment that was made to the business enterprise or person must be held by a commercial lender. This subsection does not:

(a) apply to a loan made pursuant to 17-6-317;

(b) limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2);

(c) apply to the purchase of debentures issued by a capital company. However, the total amount of debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase.

(2) The total amount of loans made pursuant to 17-6-309(2) or 17-6-317 may not exceed $50 million, and a single loan may not be less than $250,000. Except for a loan made pursuant to 17-6-317, a loan may not exceed $16,666 for each job that is estimated to be created. In determining the size of a loan made pursuant to 17-6-309(2), the board shall consider:

(a) the estimated number of jobs to be created by the project within a 4-year period from the time that the loan is made and the impact of the jobs on the state and the community where the project will be located;

(b) the long-term effect of corporate and personal income taxes estimated to be paid by the business and its employees;

(c) the current and projected ability of the community to provide necessary infrastructure for economic and community development purposes;

(d) the amount of increased salaries, wages, and business incomes of existing jobholders and businesses; and

(e) other matters that the board considers necessary.

History: En. Sec. 8, Ch. 677, L. 1983; amd. Sec. 4, Ch. 640, L. 1985; amd. Sec. 3, Ch. 124, L. 1987; amd. Sec. 9, Ch. 589, L. 1991; amd. Sec. 3, Ch. 2, L. 1995; amd. Sec. 3, Ch. 477, L. 1995; amd. Sec. 1, Ch. 98, L. 1997; amd. Sec. 2, Ch. 64, L. 1999; amd. Sec. 2, Ch. 4, Sp. L. May 2000; amd. Sec. 2, Ch. 487, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 487 deleted former (1), (2), and (3) that read: "(1) Except as provided in subsections (2) through (4), an investment may not be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 1% of the permanent coal tax trust fund. This subsection does not apply to a loan made pursuant to 17-6-317.

(2) Subsection (1) does not limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2).

(3) Subsection (1) does not apply to the purchase of debentures issued by a capital company. However, the total amount of debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase"; inserted (1) prohibiting certain types of investments; and made minor changes in style. Amendment effective May 1, 2001.

2000 Amendment: Chapter 4 in (1) inserted second sentence excepting 17-6-317 from provisions of subsection (1); in (4) in first sentence inserted "or 17-6-317" and at beginning of second sentence inserted exception clause; and made minor changes in style. Amendment effective May 11, 2000.

17-6-312. State participation in loans. (1) Subject to 17-6-311, state participation in any loan to a business enterprise, except for a loan made pursuant to 17-6-317 or guaranteed by a federal agency, must be limited to 80% of the outstanding loan. The state shall participate in the security for a loan in the same proportion as the loan participation amount.

(2) The purchase of debentures issued by a capital company is not a loan participation and is not subject to subsection (1).

(3) State participation in loans to nonprofit corporations may qualify for the job credit interest rate reductions under 17-6-318 if the interest rate reduction passes through to a for-profit business creating the jobs.

History: En. Sec. 9, Ch. 677, L. 1983; amd. Sec. 4, Ch. 124, L. 1987; amd. Sec. 4, Ch. 2, L. 1995; amd. Sec. 4, Ch. 477, L. 1995; amd. Sec. 3, Ch. 4, Sp. L. May 2000; amd. Sec. 3, Ch. 487, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 487 in (1) near beginning after "Subject to" substituted "17-6-311" for "17-6-311(4)". Amendment effective May 1, 2001.

2000 Amendment: Chapter 4 in (1) in middle of first sentence inserted reference to 17-6-317. Amendment effective May 11, 2000.

17-6-313. Prior commitment of funds. The board may authorize the commitment of funds to financial institutions and capital companies pursuant to rules adopted by the board, but the determination as to credit with respect to individual investments must be made by the financial institution and the board or the capital company and the board.

History: En. Sec. 10, Ch. 677, L. 1983; amd. Sec. 5, Ch. 124, L. 1987.

17-6-314. Rate of return. Except as provided in 17-6-317, in calculating the rate of return for any Montana investment to be made from the permanent coal tax trust fund, the board shall consider the long-term benefit to the Montana economy and the additional service fee discount provided for in 17-6-319.

History: En. Sec. 11, Ch. 677, L. 1983; amd. Sec. 10, Ch. 589, L. 1991; amd. Sec. 4, Ch. 4, Sp. L. May 2000.

Compiler's Comments

2000 Amendment: Chapter 4 at beginning inserted exception clause. Amendment effective May 11, 2000.

17-6-315. Repealed. Sec. 19, Ch. 589, L. 1991.

History: En. Sec. 12, Ch. 677, L. 1983; amd. Sec. 5, Ch. 640, L. 1985; amd. Sec. 1, Ch. 102, L. 1987.

17-6-316. Economic development loan — infrastructure tax credit. (1) A loan made pursuant to 17-6-309(2) must be used to build infrastructure, as provided for in 7-15-4288(4), such as water systems, sewer systems, water treatment facilities, sewage treatment facilities, and roads, that allows the location or creation of a business in Montana. The loan must be made to a local government that will create the necessary infrastructure. The infrastructure may serve as collateral for the loan. The local government receiving the loan may charge fees to the users of the infrastructure. A loan repayment agreement must provide for repayment of the loan from the entity authorized to charge fees for the use of the services of the infrastructure. Loans made pursuant to 17-6-309(2) qualify for the job credit interest rate reductions under 17-6-318 if the interest rate reduction passes through to the business creating the jobs.

(2) A loan pursuant to 17-6-309(2) and this section may not be made until the board is satisfied that the condition in 17-6-309(2) will be met. If the condition contained in 17-6-309(2) is not met, any credits received pursuant to subsection (3) of this section must be returned to the state.

(3) A business that is created or expanded as the result of a loan made pursuant to 17-6-309(2) and subsection (1) of this section is entitled to a credit against taxes due under Title 15, chapter 30 or 31, for the portion of the fees attributable to the use of the infrastructure. The total amount of tax credit claimed may not exceed the amount of the loan. The credit may be carried forward for 7 tax years or carried back for 3 tax years.

History: En. Sec. 5, Ch. 2, L. 1995; En. Sec. 5, Ch. 477, L. 1995; amd. Sec. 7, Ch. 477, L. 1995.

17-6-317. Participation by private financial institutions — rulemaking. (1) (a) The board may jointly participate with private financial institutions in making loans to a business enterprise if the loan will:

(i) result in the creation of a business estimated to employ at least 10 people in Montana on a permanent, full-time basis;

(ii) result in the expansion of a business estimated to employ at least an additional 10 people in Montana on a permanent, full-time basis; or

(iii) prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time employees of the business.

(b) Loans under this section may be made only to business enterprises that are producing or will produce value-added products or commodities.

(c) A loan made pursuant to this section does not qualify for a job credit interest rate reduction under 17-6-318.

(2) A loan made pursuant to this section may not exceed 1% of the coal severance tax permanent fund and must comply with each of the following requirements:

(a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least 25% of the total loan amount.

(ii) A participating private financial institution may not require the business to have an equity position greater than 50% of the total loan amount.

(iii) If additional security or guarantees, exclusive of federal guarantees, are required to cover a participating private financial institution, then the additional security or guarantees must be proportional to the amount loaned by all participants, including the board of investments.

(b) The board shall provide 75% of the total loan amount.

(c) The term of the loan may not exceed 15 years.

(d) The board shall charge interest at the following annual rate:

(i) 2% for the first 5 years if 15 or more jobs are created or retained;

(ii) 4% for the first 5 years if 10 to 14 jobs are created or retained;

(iii) 6% for the second 5 years; and

(iv) the board's posted interest rate for the third 5 years, but not to exceed 10% a year.

(e) (i) The interest rates in subsections (2)(d)(i) and (2)(d)(ii) become effective when the board receives certification that the required number of jobs has been created or as provided in subsection (2)(e)(ii). If the board disburses loan proceeds prior to creation of the required jobs, the loan must bear interest at the board's posted rate.

(ii) In establishing interest rates under subsections (2)(d)(i) and (2)(d)(ii) for preventing the elimination of jobs, the board shall require the submission of financial data that allows the board to determine if the loan and interest rate will in fact prevent the elimination of jobs.

(f) If a business entitled to the interest rate in subsection (2)(d)(i) or (2)(d)(ii) reduces the number of required jobs, the board may apply a graduated scale to increase the interest rate, not to exceed the board's posted rate.

(g) For purposes of calculating job creation or retention requirements, the board shall use the average weekly salary, as defined in 39-71-116, multiplied by the number of jobs required. This calculated number is the minimum aggregate salary threshold that is required to be eligible for a reduced interest rate. If individual jobs created pay less than the average weekly salary, the borrower shall create more jobs to meet the minimum aggregate salary threshold. If fewer jobs are created or retained than required in subsection (2)(d)(i) or (2)(d)(ii) but aggregate salaries meet the minimum aggregate salary threshold, the borrower is eligible for the reduced interest rate. A job paying less than the minimum wage, provided for in 39-3-409, may not be included in the required number of jobs.

(h) (i) A participating private financial institution may charge interest in an amount equal to the national prime interest rate, adjusted on January 1 of each year, but the interest rate may not be less than 6% or greater than 12%.

(ii) At the borrower's discretion, the borrower may request the lead lender to change this prime rate to an adjustable or fixed rate on terms acceptable to the borrower and lender.

(iii) A participating private financial institution, or lead private financial institution if more than one is participating, may charge a 0.5% annual service fee.

(i) The business enterprise may not be charged a loan prepayment penalty.

(j) The loan agreement must contain provisions providing for pro rata lien priority and pro rata liquidation provisions based upon the loan percentage of the board and each participating private lender.

(3) If a portion of a loan made pursuant to this section is for construction, disbursement of that portion of the loan must be made based upon the percentage of completion to ensure that the construction portion of the loan is advanced prior to completion of the project.

(4) A private financial institution shall participate in a loan made pursuant to this section to the extent of 85% of its lending limit or 25% of the loan, whichever is less. However, the board's participation in the loan must be 75% of the loan amount.

(5) A business enterprise receiving a loan under the provisions of this section may not pay bonuses or dividends to investors until the loan has been paid off, except that incentives may be paid to employees for achieving performance standards or goals.

(6) The board may adopt rules that it considers necessary to implement this section.

History: En. Sec. 1, Ch. 4, Sp. L. May 2000; amd. Sec. 1, Ch. 289, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 289 in (1)(a)(i) and (1)(a)(ii) before "people" substituted "10" for "15"; inserted (1)(a)(iii) allowing joint participation in making loans if a loan will prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time employees of the business; in (2)(a)(ii) after "require" inserted "the business to have an equity position greater than 50% of the total loan amount"; deleted former (2)(a)(ii)(A) and (2)(a)(ii)(B) that read: "(A) the business enterprise to have an equity position greater than 25% of the total loan amount; or

(B) additional security or guarantees to cover its exposure, but this does not preclude federal guarantees"; inserted (2)(a)(iii) requiring that any necessary additional security or guarantees be proportional to the amount loaned by all participants; in (2)(d) in introductory clause after "following" inserted "annual"; in (2)(d)(i) after "5 years" inserted "if 15 or more jobs are created or retained"; inserted (2)(d)(ii) requiring an annual rate of 4% for the first 5 years if 10 to 14 jobs are created or retained; in (2)(d)(iv) at beginning substituted "the board's posted interest rate for the third 5 years" for "for the third 5 years, an amount equal to the national prime interest rate, adjusted annually on January 1 of each year"; inserted (2)(e) regarding interest rates that apply upon certification that the required number of jobs has been created or the elimination of jobs has been prevented; inserted (2)(f) allowing application of a graduated scale if a business reduces the number of required jobs; inserted (2)(g) establishing a formula to be used by the board in calculating job creation or retention requirements; inserted (2)(h)(ii) allowing a borrower to request the lead lender to change the national prime interest rate to an adjustable or fixed rate; and made minor changes in style. Amendment effective April 20, 2001.

Effective Date: Section 7, Ch. 4, Sp. L. May 2000, provided: "[This act] is effective on passage and approval." Approved May 11, 2000.

17-6-318. Job credit interest rate reduction for business loan participation. (1) A borrower who uses the proceeds of a business loan participation funded under the provisions of this part to create jobs employing Montana residents is entitled to a job credit interest rate reduction for each job created to employ a Montana resident. A borrower who uses the proceeds of a loan made pursuant to 17-6-309(2) to create jobs is entitled to a job credit interest rate reduction for each job created. The job credit interest rate reduction is equal to 0.05% for each job created to employ a Montana resident, up to a maximum interest rate reduction of 2.5%.

(2) If the salary or wage of the job created:

(a) exceeds the average weekly wage, as defined in 39-71-116, the amount of the job credit interest rate reduction may be increased proportionately for each increment of 25% above the average weekly wage to a maximum of two times the average weekly wage; or

(b) is less than the average weekly wage, as defined in 39-71-116, the job credit interest rate reduction is reduced proportionately for each 25% increment below the average wage.

(3) A job credit interest rate reduction may not be allowed for a job created by the borrower using the proceeds of the loan for which the salary or wage is less than the minimum wage provided for in 39-3-409.

(4) A job credit may not be given unless one whole job is created.

(5) To qualify for the job credit interest rate reduction, the borrower shall provide satisfactory evidence of the creation of jobs and shall make a written application to the board through its financial institution or, in the case of a loan made pursuant to 17-6-309(2), shall make a written application directly to the board.

History: En. Sec. 17, Ch. 589, L. 1991; amd. Sec. 2, Ch. 98, L. 1997; amd. Sec. 3, Ch. 64, L. 1999; amd. Sec. 4, Ch. 487, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 487 in (1) in first sentence near end after "for each job created" deleted "over a 2-year period" and in second sentence at end after "each job created" deleted remainder of sentence and former third and fourth sentences that read: "in the 4-year period provided for in 17-6-311(4)(a). The date of the formal written interim or permanent loan application to the financial institution will be used as a beginning date for counting the number of jobs created. The job credit interest rate reduction may not apply to a loan participation of more than 1% of the total of the permanent coal tax trust fund determined at the end of the last-completed fiscal year"; in (5) near middle after "shall make a written application" inserted "to the board", and after "through its financial institution" substituted "or, in the case of a loan made pursuant to 17-6-309(2), shall make a written application directly to the board" for "to the board when the loan is delivered to the board or not later than 45 days after the applicable anniversary dates of the loan"; and made minor changes in style. Amendment effective May 1, 2001.

17-6-319. Incentive to financial institution for small business loan participation. A financial institution that originates a small business loan no larger than 0.05% of the balance of the Montana permanent coal tax trust fund at the end of the last completed fiscal year is entitled to an additional service fee in the form of a discount equal to 0.5% of the board's participation in the loan. The board shall consider the additional service fee discount to the financial institution as part of the rate of return provided in 17-6-314.

History: En. Sec. 18, Ch. 589, L. 1991.

17-6-320 reserved.

17-6-321. Audits. The board's books and records related to in-state investments must be audited once each fiscal year by or at the direction of the legislative auditor. The actual cost of this audit must be paid from the board's funds.

History: En. Sec. 13, Ch. 677, L. 1983; amd. Sec. 3, Ch. 308, L. 1985; amd. Sec. 45, Ch. 483, L. 2001; amd. Sec. 5, Ch. 487, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 483 in (1) near middle after "department" inserted "of administration". Amendment effective July 1, 2001. The amendment by Ch. 487 rendered the amendment by Ch. 483 void.

Chapter 487 deleted former (1) that read: "(1) At least once each year, the bank examiners of the department shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds"; near beginning after "books and records" inserted "related to in-state investments"; and made minor changes in style. Amendment effective May 1, 2001.

Cross-References

Audit costs and contracts, Title 5, ch. 13, part 4.

Department of Commerce — bank examiners, 32-1-211.

17-6-322. Report. The board shall include in its annual report a section on the results of the previous year's operations of the investment in the Montana economy from the permanent coal tax trust fund, as required in 17-6-305, including:

(1) financial statements audited by independent auditors;

(2) a summary report of loan activity; and

(3) a comparison of the performance of the investments in the Montana economy in relation to the purposes contained in 17-6-303.

History: En. Sec. 14, Ch. 677, L. 1983; amd. Sec. 1, Ch. 264, L. 1987; amd. Sec. 1, Ch. 94, L. 1989; amd. Sec. 11, Ch. 589, L. 1991.

Cross-References

General duties of boards, 37-1-131.

17-6-323. Repealed. Sec. 3, Ch. 94, L. 1989.

History: En. Sec. 15, Ch. 677, L. 1983.

17-6-324. Rulemaking authority. (1) The board may adopt rules to implement the provisions of this part and 17-6-211(2). Rules adopted by the board may include:

(a) definitions of small- and medium-sized businesses;

(b) a method of committing funds to financial institutions, including guidelines for lead private financial institutions if a consortium of private financial institutions is participating in a loan made pursuant to 17-6-317;

(c) guidelines for graduation clauses for refinancing and early payment of loans made pursuant to 17-6-317;

(d) types of service fees; and

(e) types of investments to be made.

(2) The board may also adopt procedural rules to govern its proceedings.

History: En. Sec. 16, Ch. 677, L. 1983; amd. Sec. 8, Ch. 418, L. 1985; amd. Sec. 5, Ch. 4, Sp. L. May 2000.

Compiler's Comments

2000 Amendment: Chapter 4 in (1)(b) at end inserted language concerning guidelines for lead private financial institutions participating in consortium loans; inserted (1)(c) referring to guidelines for graduation clauses and early payment of loans; and made minor changes in style. Amendment effective May 11, 2000.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

17-6-325. Preference of Montana labor. Any contract to construct a project financed pursuant to this part must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

History: En. Sec. 3, Ch. 653, L. 1985; amd. Sec. 7, Ch. 561, L. 1987.

17-6-326 through 17-6-330 reserved.

17-6-331. Establishment of a Montana economic development fund. A Montana economic development fund is created. A portion of the interest income from the permanent coal tax trust fund created in 17-6-203(6) shall be deposited in the fund as determined by the legislature. Monies, if any, appropriated by the legislature from the economic development fund shall be used only for programs consistent with the objectives in 17-6-304.

History: En. Sec. 4, I.M. No. 95, approved Nov. 2, 1982; amd. Sec. 8, Ch. 445, L. 1987.

17-6-332 through 17-6-339 reserved.

17-6-340. Purchase of permanent fund mineral estate. The department of natural resources and conservation may purchase the mineral production rights held by the public school fund established in Article X, section 2, of the Montana constitution for fair market value. If the department of natural resources and conservation purchases mineral production rights, any royalty payments received by the board that are not used to reimburse the coal severance tax trust fund for the loan used for purchasing the mineral production rights must be deposited in the guarantee account provided for in 20-9-622.

History: En. Sec. 4, Ch. 418, L. 2001.

Compiler's Comments

Coal Severance Tax Loan — Agreement: Sections 8 and 9, Ch. 418, L. 2001, provided: "Section 8. Coal severance tax loan — rate of interest — appropriation. (1) There is appropriated to the department of natural resources and conservation from the coal severance tax permanent fund an amount not to exceed $75 million for the biennium ending June 30, 2003, for the purpose of purchasing mineral production rights as provided in [section 4] [17-6-340]. The department shall deposit the appropriated loan proceeds in the guarantee account provided for in [section 3] [20-9-622].

(2) The interest to be paid on the loan authorized under subsection (1) must be at the long-term investment rate. The interest is payable as of the date of the transfer of the loan proceeds from the coal severance tax permanent fund to the department.

Section 9. Loan agreement. (1) In order to make the loan authorized in [section 8] [not codified], the board of investments shall enter into a contract with the department of natural resources and conservation pledging the percentage of mineral royalties to the repayment of the loan over a period of 30 years. The loan agreement may not require a payment on the loan until fiscal year 2004. In fiscal years 2004 and 2005, 20% of the mineral royalties deposited in the guarantee account provided for in [section 3] [20-9-622] must be pledged to the loan repayment. In fiscal years 2006 through 2011, not less than 25% of the mineral royalties deposited in the guarantee account must be pledged to the loan repayment, and in succeeding fiscal years, not less than 34% of the mineral royalties deposited in the guarantee account must be pledged to the loan repayment until the loan is fully paid.

(2) The contract must provide that the loan repayment proceeds be deposited in the coal severance tax permanent fund. To the extent possible, the board of investments shall make the loan from the portion of the coal severance tax permanent fund invested in the short-term pool. The loan authorized in [section 8] [not codified] may not be made until the contract required by this section has become effective."

Effective Date: Section 13(1), Ch. 418, L. 2001, provided that this section is effective July 1, 2001.

Part 4

Microbusiness Development Act

17-6-401. Short title. This part may be cited as the "Microbusiness Development Act".

History: En. Sec. 1, Ch. 602, L. 1991.

17-6-402. Legislative findings and purpose. (1) The legislature finds and declares that:

(a) it is the policy of the state to foster and encourage economic development within the state in order to promote the general welfare of the people;

(b) no program exists by which the state encourages and assists in the creation, development, and financing of businesses with fewer than 10 full-time equivalent employees and gross revenues of less than $500,000 a year, which represent a significant component of and potential for growth in the state's economy; and

(c) neither the public sector nor the private sector currently satisfies the financial needs of these businesses.

(2) The purpose of this part is to create a program to encourage and assist in the creation, development, and financing of businesses with fewer than 10 full-time equivalent employees and gross revenues of less than $500,000 a year.

(3) The process of certification of microbusiness development corporations and selection among competing proposals for development loans must be open and competitive and allow access to the competition to all interested communities and organizations and must provide for selecting for award of development loans those projects that are best qualified according to the criteria established under 17-6-406 through 17-6-408.

History: En. Sec. 2, Ch. 602, L. 1991.

17-6-403. Definitions. As used in this part, the following definitions apply:

(1) "Certified community lead organization" means an organization that has sponsored community certification under the certified communities program of the department.

(2) "Certified microbusiness development corporation" means a microbusiness development corporation certified pursuant to 17-6-408.

(3) "Council" means the microbusiness advisory council established in 17-6-411.

(4) "Department" means the department of commerce provided for in 2-15-1801.

(5) "Development loan" means money loaned to a certified microbusiness development corporation by the department for the purpose of making microbusiness loans under the provisions of this part.

(6) "Microbusiness development corporation" means a nonprofit corporation organized and existing under the laws of the state to provide training, technical assistance, and access to capital for the startup or expansion of qualified microbusinesses.

(7) "Microbusiness loan" means a loan made from or guaranteed by a revolving loan fund contributed to by the microbusiness finance program.

(8) "Program" means the microbusiness finance program established in 17-6-406.

(9) "Qualified microbusiness" means a business enterprise located in the state that:

(a) produces goods or provides services and has fewer than 10 full-time equivalent employees and annual gross revenues of less than $500,000; or

(b) produces energy using an alternative renewable energy source as defined in 90-4-102.

(10) "Revolving loan fund" means a fund required to be established by a certified microbusiness development corporation that receives a development loan.

History: En. Sec. 3, Ch. 602, L. 1991; amd. Sec. 17, Ch. 591, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 591 in definition of qualified microbusiness inserted (b) concerning alternative renewable energy source; and made minor changes in style. Amendment effective July 1, 2001.

17-6-404 and 17-6-405 reserved.

17-6-406. Microbusiness finance program — powers and duties of department. There is a microbusiness finance program administered by the department. The department shall adopt rules to implement the provisions of this part, including but not limited to:

(1) establishing criteria and procedures for certifying microbusiness development corporations;

(2) establishing criteria and procedures to select from competing development loan applications and to award development loans to certified microbusiness development corporations;

(3) establishing criteria and procedures to be followed by certified microbusiness development corporations that administer revolving loan funds supported by the program;

(4) determining the amount and method of computation and payment of interest rates charged to recipients of development loans and specifying amortization schedules and other terms and conditions for development loans as may be necessary;

(5) establishing criteria for determining nonperformance and declaring default in the administration of development loans and requiring the refund of defaulted development loan funds to the microbusiness development loan account;

(6) establishing criteria for satisfactory performance in development loan administration to determine eligibility for renewal of development loans or for additional development loans;

(7) establishing guidelines for maximum and minimum interest rates that may be charged by certified microbusiness development corporations on microbusiness loans; and

(8) dividing the state into not more than 12 multicounty service regions within each of which not more than one microbusiness development corporation may be funded at any time. However, a corporation that is funded as a statewide microbusiness development corporation under 17-6-408 may offer specialized services to constituents within regions [or within an Indian reservation] having a funded regional microbusiness development corporation. *(Bracketed language terminates June 30, 2005—sec. 5, Ch. 69, L. 2001.)*

History: En. Sec. 4, Ch. 602, L. 1991; amd. Sec. 1, Ch. 88, L. 1993; amd. Sec. 9, Ch. 512, L. 1999.

Compiler's Comments

Extension of Termination Date: Section 5, Ch. 69, L. 2001, amended sec. 19, Ch. 512, L. 1999, by extending the termination date imposed by Ch. 512 to June 30, 2005. Effective March 19, 2001.

17-6-407. Microbusiness development loan account and finance program administrative account — criteria — limitations. (1) There is in the state special revenue fund a microbusiness development loan account into which the funds appropriated pursuant to section 11, Chapter 602, Laws of 1991, money appropriated pursuant to section 3, Chapter 413, Laws of 1995, and money received in repayment of the principal of development loans must be deposited. The department may make development loans from the account to a certified microbusiness development corporation.

(2) There is in the state special revenue fund a microbusiness finance program administrative account into which must be deposited:

(a) all interest received on development loans received directly from microbusiness development corporations;

(b) service charges or fees received from certified microbusiness development corporations; and

(c) grants, donations, and private or public income.

(3) Money in the administrative account may be transferred to the development loan account or be used to pay the costs of the program, including personnel, travel, equipment, supplies, consulting costs, and other operating expenses of the program.

(4) Subject to subsection (1), a certified microbusiness development corporation that receives a development loan may apply for an additional loan if the applicant meets the performance criteria established by the department.

(5) To establish the criteria for making development loans, the department shall consider:

(a) the plan for providing services to microbusinesses;

(b) the scope of services to be provided by the certified microbusiness development corporation;

(c) the geographic representation of all regions of the state, including urban, rural[, and tribal] communities;

(d) the plan for providing service to minorities, women, and low-income persons;

(e) the ability of the corporation to provide business training and technical assistance to microbusiness clients;

(f) the ability of the corporation, with its plan, to:

(i) monitor and provide financial oversight of recipients of microbusiness loans;

(ii) administer a revolving loan fund; and

(iii) investigate and qualify financing proposals and to service credit accounts;

(g) sources and sufficiency of operating funds for the certified microbusiness development corporation; and

(h) the intent of the corporation, with its plan and written indications of local institutional support, to provide services to a designated multicounty region of the state.

(6) Development loan funds may be used by a certified microbusiness development corporation to:

(a) satisfy matching fund requirements for other state, federal, or private funding only if funding is intended and used for the purpose of providing or enhancing the certified microbusiness development corporation's ability to provide and administer loans, technical assistance, or management training to microbusinesses;

(b) establish a revolving loan fund from which the certified microbusiness development corporation may make loans to qualified microbusinesses, provided that a single loan does not exceed $35,000 and the outstanding balance of all loans to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share does not exceed $35,000;

(c) establish a guarantee fund from which the certified microbusiness development corporation may guarantee loans made by financial institutions to qualified microbusinesses. However, a single guarantee may not exceed $35,000, and the aggregate of all guarantees to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share may not exceed $35,000.

(7) Development loan funds may not be:

(a) loaned for relending or investment in stocks, bonds, or other securities or for property not intended for use in production by the recipient of the loan; or

(b) used to:

(i) refinance a nonperforming loan held by a financial institution; or

(ii) pay the operating costs of a certified microbusiness development corporation. However, interest income earned from the proceeds of a development loan may be used to pay operating expenses.

(8) Certified microbusiness development corporations are required to contribute cash from other sources to leverage and secure development loans from the program. Contributions provided by the corporation must be on a ratio of at least $1 from other sources for each $6 from the program. These contributions may come from a public or private source other than the program and may be in the form of equity capital, loans, or grants.

(9) Development loans must be made pursuant to a development loan agreement and may be amortization or term loans, bear interest at less than the market rate, be renewable, be callable, and contain other terms and conditions considered appropriate by the department that are consistent with the purposes of and with rules promulgated to implement this part.

(10) Each certified microbusiness development corporation that receives a development loan under this part shall provide the department with an annual audit from an independent certified public accountant. The audit must cover all of the microbusiness development corporation's activities and must include verification of compliance with requirements specific to the microbusiness program.

(11) A certified microbusiness development corporation that is in default for nonperformance under rules established by the department may be required to refund the outstanding balance of development loans awarded prior to the default declaration. A development loan is secured by a first lien on all funds and all receivables administered under the authority of the microbusiness development act by the corporation receiving the loan. *(Bracketed language terminates June 30, 2005—sec. 5, Ch. 69, L. 2001.)*

History: En. Sec. 5, Ch. 602, L. 1991; amd. Sec. 2, Ch. 88, L. 1993; amd. Sec. 1, Ch. 413, L. 1995; amd. Sec. 10, Ch. 512, L. 1999; amd. Sec. 1, Ch. 521, L. 1999.

Compiler's Comments

Extension of Termination Date: Section 5, Ch. 69, L. 2001, amended sec. 19, Ch. 512, L. 1999, by extending the termination date imposed by Ch. 512 to June 30, 2005. Effective March 19, 2001.

17-6-408. Certification of microbusiness development corporations. The department may certify:

(1) a microbusiness development corporation when it determines that the corporation:

(a) has developed a viable plan for providing training, access to financing, and technical assistance for qualified microbusinesses;

(b) has broad-based community support in a designated multicounty region of the state, as reflected, for example, by the membership of its board of directors; and

(c) has an adequate source of operating capital; or

(2) a statewide microbusiness development corporation when the department determines that the corporation meets the conditions under subsections (1)(a) and (1)(c) and, in addition:

(a) has a viable plan to provide specialized services to constituents throughout the state [or within at least four Indian reservations in Montana]; and

(b) does not preempt or duplicate efforts of microbusiness development corporations within local communities. *(Bracketed language terminates June 30, 2005—sec. 5, Ch. 69, L. 2001.)*

History: En. Sec. 6, Ch. 602, L. 1991; amd. Sec. 3, Ch. 88, L. 1993; amd. Sec. 11, Ch. 512, L. 1999.

Compiler's Comments

Extension of Termination Date: Section 5, Ch. 69, L. 2001, amended sec. 19, Ch. 512, L. 1999, by extending the termination date imposed by Ch. 512 to June 30, 2005. Effective March 19, 2001.

17-6-409. Authority to accept funds — funding authorization. (1) The department may accept grants, donations, and other private and public income, including payments of interest on loans made by the department under the provisions of this part and fees charged by the department. The department shall deposit all money received under this section in the microbusiness finance program administrative account established in 17-6-407.

(2) The money in the microbusiness finance program administrative account may be appropriated for the purposes stated in this part.

History: En. Sec. 8, Ch. 602, L. 1991; amd. Sec. 23, Ch. 509, L. 1995.

17-6-410 reserved.

17-6-411. Microbusiness advisory council — appointment of members — organization — nonvoting legislative consulting panel. (1) Subject to the provisions of subsection (5), there is a microbusiness advisory council composed of 13 members appointed by the governor from a list of candidates submitted by the director of the department after the department provides by rule for a process of requesting and receiving nominations from the public. No more than seven of the council members may live in the same congressional district as the congressional districts existed on December 31, 1990. At least three members must be representatives of certified community lead organizations. At least two of the three community representatives shall reside in communities with a population of less than 15,000. At least three members must be owners of qualified microbusinesses as defined in 17-6-403. At least two members must have expertise in administering loan funds. The membership must include representation of minorities, women, and low-income persons.

(2) Members shall serve 4-year terms. A member appointed to fill an unexpired term shall serve until the term expires.

(3) The members of the council shall elect a presiding officer and other officers as they determine necessary.

(4) The council shall meet at least once each quarter and more often as the presiding officer or a majority of the members determine necessary.

(5) (a) There is a legislative consulting panel of four members. The panel:

(i) shall meet with the council, participate in deliberations of the council, and advise the council in performance of its functions under subsection (7) but may not vote on any motion before the council; and

(ii) consists of:

(A) two representatives, including one from each party, appointed by the speaker of the house of representatives; and

(B) two senators, including one from each party, appointed by the committee on committees.

(b) The members:

(i) must be appointed on or before the 10th day of each regular session of the legislature and shall serve until the convening of the next regular session of the legislature. If a vacancy on the panel occurs during a legislative interim, that vacancy must be filled in the same manner as the original appointment.

(ii) are entitled to compensation in the same manner as members of the council, as provided in subsection (6).

(6) Members of the council are not entitled to compensation for their services except for reimbursement of expenses as provided in 2-18-501 through 2-18-503.

(7) The function of the council is to advise the department regarding the creation, operation, and maintenance of the program and the policies and operations affecting the certified microbusiness development corporations.

History: En. Sec. 7, Ch. 602, L. 1991; amd. Sec. 2, Ch. 413, L. 1995.

Part 5
Job Investment Act
(Repealed)

17-6-501. Repealed. Sec. 12, Ch. 307, L. 2001.
History: En. Sec. 1, Ch. 559, L. 1995.

17-6-502. Repealed. Sec. 12, Ch. 307, L. 2001.
History: En. Sec. 2, Ch. 559, L. 1995.

17-6-503. Repealed. Sec. 12, Ch. 307, L. 2001.
History: En. Sec. 3, Ch. 559, L. 1995; amd. Sec. 8, Ch. 549, L. 1997.

17-6-504. Repealed. Sec. 12, Ch. 307, L. 2001.
History: En. Sec. 4, Ch. 559, L. 1995.

17-6-505. Repealed. Sec. 12, Ch. 307, L. 2001.
History: En. Sec. 5, Ch. 559, L. 1995.

17-6-506 through 17-6-508 reserved.

17-6-509. Repealed. Sec. 12, Ch. 307, L. 2001.
History: En. Sec. 6, Ch. 559, L. 1995; amd. Sec. 9, Ch. 549, L. 1997.

17-6-510. Repealed. Sec. 12, Ch. 307, L. 2001.
History: En. Sec. 7, Ch. 559, L. 1995; amd. Sec. 10, Ch. 549, L. 1997.

17-6-511. Repealed. Sec. 12, Ch. 307, L. 2001.
History: En. Sec. 8, Ch. 559, L. 1995; amd. Sec. 41, Ch. 19, L. 1999.

17-6-512. Repealed. Sec. 12, Ch. 307, L. 2001.
History: En. Sec. 9, Ch. 559, L. 1995.

Part 6
Montana Tobacco Settlement Trust Fund

Part Compiler's Comments

Effective Date: Section 6, Ch. 467, L. 2001, provided: "[This act] is effective on passage and approval." Approved April 30, 2001.

Retroactive Applicability: Section 7, Ch. 467, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to proceeds from the tobacco settlement occurring on or after January 1, 2001."

17-6-601. Establishment — purpose. A Montana tobacco settlement trust fund, as provided for in Article XII, section 4, of the Montana constitution, is established to provide a permanent source of revenue to fund the costs that the state incurs in:

(1) programs for tobacco disease prevention; and

(2) providing benefits, services, or coverage of health care needs.

History: En. Sec. 1, Ch. 467, L. 2001.

17-6-602. Definitions. As used in this part, the following definitions apply:

(1) "Benefits, services, or coverage of health care needs" means the provision of health care to persons by the state through any program of benefits, services, or coverage, including income tax incentives.

(2) "Health care" has the meaning provided in 50-16-504.

(3) "Programs for tobacco disease prevention" means programs of services administered by the state for the purposes of informing individuals of the health risks of tobacco use and

exposure, assisting persons in the avoidance of tobacco products use, and assisting individuals in cessation of tobacco use.

(4) "Tobacco products" means a substance intended for human use that contains tobacco and includes but is not limited to cigarettes, cigars, smoking tobacco, and tobacco intended for use in an oral or nasal cavity.

(5) "Trust fund" means the Montana tobacco settlement trust fund authorized by Article XII, section 4, of the Montana constitution and implemented through this part.

History: En. Sec. 2, Ch. 467, L. 2001.

17-6-603. Montana tobacco settlement trust fund — state special revenue fund account. (1) Nine-tenths of the interest and income derived from the trust fund on or after January 1, 2001, must be deposited in an account in the state special revenue fund and is subject to appropriation in accordance with subsection (3). One-tenth of the interest and income derived from the trust fund must remain in the trust fund.

(2) In addition to the money required to be deposited in the trust fund as principal, the legislature may deposit additional money in the trust fund as principal.

(3) The legislature shall appropriate money from the state special revenue fund account provided for in subsection (1) for programs for tobacco disease prevention and for state programs that provide benefits, services, or coverage of health care needs.

(4) The money appropriated under this section may not be used to replace state or federal money used to fund programs for tobacco disease prevention or state programs in existence on December 31, 1999, that provide benefits, services, or coverage of health care needs.

History: En. Sec. 3, Ch. 467, L. 2001.

Part 7

Montana In-State Investment in Electrical Generation Facilities

Part Compiler's Comments

Effective Date: Section 32(1), Ch. 577, L. 2001, provided that this part is effective July 1, 2001.

17-6-701. Purpose. The purposes of this part are to:

(1) create up to 450 megawatts of electrical energy from new generation projects in Montana; and

(2) permit the purchase of up to 120 megawatts of electrical energy from existing qualified facilities that are located in Montana for the purpose of providing consumers with low-cost, reliable electrical energy.

History: En. Sec. 1, Ch. 577, L. 2001.

17-6-702. Definitions. As used in this part, the following definitions apply:

(1) "Default supplier" has the meaning provided in 69-8-103.

(2) "Montana industry" means a commercial enterprise located within Montana that would have consumed more than 5 megawatts of electrical energy on an average during the last 12 months if the enterprise had not closed due to electrical prices.

(3) "Qualified facility" means an electrical generation facility owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a, or as provided for in 16 U.S.C. 796(17)(A).

History: En. Sec. 2, Ch. 577, L. 2001.

17-6-703. Qualification date. In order to participate under this part, a new generation project must commence or have completed construction by July 1, 2003, or be an existing qualified facility choosing to participate in the contract portion of the program provided for in 17-6-705.

History: En. Sec. 3, Ch. 577, L. 2001.

17-6-704. Investment criteria. (1) The board of investments shall review applications from proposed new electrical generation facilities and existing qualified facilities for in-state investments pursuant to Title 17, chapter 6, part 3. In order to make an investment in a new electrical generation facility or an existing qualified facility, the board shall determine that:

(a) the project promotes economic development in Montana and creates or maintains employment opportunities in Montana;

(b) the construction of the project will provide stable electrical energy rates for Montanans who rely on the default supplier for electrical energy;

(c) the project will maintain environmental quality consistent with state and federal standards; and

(d) the project possesses long-term economic prospects consistent with the obligation to provide electrical energy generation capacity and electrical energy for the term of the contracts as required in 17-6-705.

(2) A project selected by the board must be collateralized by payments for the sale of the electricity produced by the project to the default supplier or a Montana industry at rates not in excess of 5 cents per kilowatt hour plus annual escalations equal to the inflation rate. A payment may be made from the assets of the state if the default supplier or its assignee or a Montana industry fails to pay the approved project for energy delivered in order to maintain the supply of energy to Montana. The state must be a party to the contract and may bring a cause of action against the default supplier or a Montana industry for nonpayment.

History: En. Sec. 4, Ch. 577, L. 2001.

17-6-705. Term of contract — pledge. (1) A project is not eligible for an investment under 17-6-704 unless the applicant has signed an assignable electrical energy sales agreement with the default supplier or its successor in interest or with a Montana industry for a term of not less than 15 years or more than 25 years.

(2) The proceeds of the contract must be pledged as security for the repayment of the investment.

History: En. Sec. 5, Ch. 577, L. 2001.

CHAPTER 7

BUDGETING AND APPROPRIATIONS

Part 1 — Budget Systems and Program Plans

17-7-101. Short title.
17-7-102. Definitions.
17-7-103. Governor chief budget officer — appointment of budget director.
17-7-104 through 17-7-106. Repealed.
17-7-107 through 17-7-110 reserved.
17-7-111. Preparation of state budget — agency program budgets — form distribution and contents.
17-7-112. Submission deadlines — budgeting schedule.
17-7-113. Inquiries and investigations by budget director.
17-7-114. Repealed.
17-7-115 through 17-7-120 reserved.
17-7-121. Preliminary budget preparation and submission to governor and governor-elect.
17-7-122. Preparation of budget.
17-7-123. Form of executive budget.
17-7-124. Additional budget data.
17-7-125 through 17-7-130 reserved.
17-7-131. Legislative action.
17-7-132. Right to appear on consideration of budget.
17-7-133 through 17-7-137 reserved.
17-7-138. Operating budget.
17-7-139. Program transfers.
17-7-140. Reduction in spending.
17-7-141. Audit costs.
17-7-142. Calculation of reversions for funded resident enrollment growth in Montana university system.
17-7-143 through 17-7-149 reserved.
17-7-150. Definitions.
17-7-151. Budget performance — comparison.

Part 2 — Long-Range Building Program and Budget

17-7-201. Definitions of building and construction.
17-7-202. Preparation of building programs and submission to department of administration.
17-7-203. Submission to legislature.

17-7-204. Long-range building program.
17-7-205. Long-range building program account.
17-7-206. Maintenance for state buildings.
17-7-207 through 17-7-210 reserved.
17-7-211. Expansion to be authorized — budget amendment.
17-7-212. Reappropriation of capital projects.

Part 3 — Supplemental Appropriations, Encumbrances, and Reversions

17-7-301. Authorization to expend during first year of biennium from appropriation for second year — proposed supplemental appropriation defined — limit on second-year expenditures.
17-7-302. Encumbrance of fiscal yearend obligations.
17-7-303. Reappropriation of encumbered obligations at end of each fiscal year.
17-7-304. Disposal of unexpended appropriations.
17-7-305. Supplemental appropriations for legislative agencies.
17-7-306 through 17-7-310 reserved.
17-7-311. Proposed fiscal year transfer supplemental appropriation — procedure.

Part 4 — Budget Amendments

17-7-401. Repealed.
17-7-402. Budget amendment requirements.
17-7-403. Budget amendment certification.
17-7-404. Budget amendment procedures.
17-7-405. Voidness of improperly certified budget amendments.

Part 5 — Statutory Appropriations

17-7-501. Appropriations — type.
17-7-502. Statutory appropriations — definition — requisites for validity.

Chapter Cross-References

Receipt and transmission of donations from sale of collegiate license plates, 61-3-465, 61-3-467.

Part 1
Budget Systems and Program Plans

Part Cross-References

General appropriation bills, Art. V, sec. 11(4), Mont. Const.
No appropriation to private sector, Art. V, sec. 11(5), Mont. Const.
State to have balanced budget, Art. VIII, sec. 9, Mont. Const.
Requirement of fiscal notes with committee reports, 5-4-201.
Budget amendments, 5-12-102, 5-12-401.
Fiscal Analyst to analyze executive budget, 5-12-302.
Budget systems of counties, cities, and towns, Title 7, ch. 6.
Dedication of state revenue, Title 17, ch. 1, part 5.

17-7-101. Short title. This part shall be known and may be cited as the "Budget Act".

History: En. Sec. 1, Ch. 205, L. 1919; re-en. Sec. 294, R.C.M. 1921; re-en. Sec. 294, R.C.M. 1935; amd. Sec. 29, Ch. 326, L. 1974; R.C.M. 1947, 79-1001.

17-7-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) "Approving authority" means:

(a) the governor or the governor's designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(4) "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget may not exceed that level of funding authorized by the previous legislature.

(5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(10) "Present law base" means that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

(a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;

(b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;

(c) inflationary or deflationary adjustments; and

(d) elimination of nonrecurring appropriations.

(11) "Program" means a principal organizational or budgetary unit within an agency.

(12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell.

History: En. 79-1012.1 by Sec. 1, Ch. 460, L. 1975; R.C.M. 1947, 79-1012.1; amd. Sec. 1, Ch. 596, L. 1983; amd. Sec. 5, Ch. 787, L. 1991; amd. Sec. 2, Ch. 12, Sp. L. November 1993; amd. Sec. 7, Ch. 308, L. 1995; amd. Sec. 5, Ch. 347, L. 1997.

17-7-103. Governor chief budget officer — appointment of budget director. (1) The governor shall be the chief budget officer of the state and shall appoint a budget director who shall hold office at the pleasure of the governor and perform the duties assigned by law or by the governor.

(2) The budget director may appoint a chief assistant and may employ such other personnel as may be necessary to carry out the provisions of this chapter.

History: (1)En. Sec. 1, Ch. 158, L. 1959; amd. Sec. 1, Ch. 101, L. 1969; amd. Sec. 1, Ch. 42, L. 1974; amd. Sec. 1, Ch. 282, L. 1974; amd. Sec. 8, Ch. 61, L. 1977; Sec. 79-1012, R.C.M. 1947; (2)En. Sec. 5, Ch. 158, L. 1959; amd. Sec. 5, Ch. 282, L. 1974; Sec. 79-1016, R.C.M. 1947; R.C.M. 1947, 79-1012, 79-1016(part).

Cross-References

General duties of Budget Director, 17-1-131.

17-7-104 through 17-7-106. Repealed. Sec. 1, Ch. 432, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

17-7-104 through 17-7-106. En. 79-1012.2, 79-1012.3, 79-1020 by Secs. 2, 3, 5, Ch. 460, L. 1975; R.C.M. 1947, 79-1012.2, 79-1012.3, 79-1012.5.

17-7-107 through 17-7-110 reserved.

17-7-111. Preparation of state budget — agency program budgets — form distribution and contents. (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2)(a) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.

(3) The agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that transfer profits to the general fund or to an account subject to appropriation for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the current biennium and estimated for the subsequent biennium;

(c) a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(f) for only agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the budget director. Each agency plan must include base budget reductions that reflect the required percentage reduction by fund type for the general fund and state special revenue fund types. The plan must include:

(i) a prioritized list of services that would be eliminated or reduced;

(ii) for each service included in the prioritized list, the savings that would result from the elimination or reduction; and

(iii) the consequences or impacts of the proposed elimination or reduction of each service.

(g) a reference for each new information technology proposal stating whether the new proposal is included in the approved agency information technology plan as required in 2-17-523; and

(h) other information the budget director feels is necessary for the preparation of a budget.

(4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) a statewide summary of recommendations for information technology projects and new initiatives. Each recommendation must be presented by institution, agency, or branch and by funding source, and recommendations for major new information technology projects must contain the information identified in 2-17-526.

(c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(6) The budget director may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns.

History: En. Sec. 2, Ch. 158, L. 1959; amd. Sec. 1, Ch. 91, L. 1961; amd. Sec. 1, Ch. 223, L. 1969; amd. Sec. 2, Ch. 282, L. 1974; R.C.M. 1947, 79-1013(part); amd. Sec. 1, Ch. 666, L. 1983; amd. Sec. 1, Ch. 343, L. 1985; amd. Sec. 4, Ch. 5, Sp. L. July 1992; amd. Sec. 3, Ch. 20, L. 1993; amd. Sec. 3, Ch. 12, Sp. L. November 1993; amd. Sec. 1, Ch. 13, Sp. L. November 1993; amd. Sec. 6, Ch. 347, L. 1997; amd. Sec. 1, Ch. 20, L. 1999; amd. Sec. 1, Ch. 332, L. 1999; amd. Sec. 37, Ch. 313, L. 2001; amd. Sec. 3, Ch. 569, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 313 inserted (3)(g) relating to new information technology proposals; inserted (4)(b) relating to a statewide summary of recommendations for information technology projects; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 569 in (3)(b) near middle after "each" deleted "accounting entity within each"; deleted former (3)(f) that read: "(f) a reference, for each program included in the agency budget request, identifying whether the program may be operated at the discretion of the agency or whether the agency is required by federal or state law to operate, administer, or manage the program"; in (3)(f) near beginning of first sentence after "reduce the proposed" substituted "base budget for the general appropriations act and the proposed state pay plan to 95%" for "budget to 85%" and at end inserted "or lower if directed by the budget director" and inserted second sentence requiring each agency plan to include base budget reductions; and made minor changes in style. Amendment effective July 1, 2001.

17-7-112. Submission deadlines — budgeting schedule. The following is the schedule for the preparation of a state budget for submission to the legislature convening in the following year:

(1) By August 1, forms necessary for preparation of budget estimates must be distributed pursuant to 17-7-111(2).

(2) (a) By September 1, each agency shall submit the information required under 17-7-111 to the budget director. The department of justice shall submit information received from counties concerning the state's share of county attorney salaries.

(b) As provided in 7-4-2502(2)(a), the department of justice is not obligated to provide more than one-half of the salary of a county attorney based on the amount included in the department's budget and appropriated for that purpose.

(3) By September 1, the budget director shall submit each state agency's budget request required under 17-7-111(3) to the legislative fiscal analyst. The transfer of budget information must be done on a schedule mutually agreed to by the budget director and the legislative fiscal analyst in a manner that facilitates an even transfer of budget information that allows each office to maintain a reasonable staff workflow.

(4) By October 10, the budget director shall furnish the legislative fiscal analyst with a preliminary budget reflecting the base budget in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

(5) By October 30, a budget request must be prepared by the budget director and submitted to the legislative fiscal analyst on behalf of any agency that did not present the information required by this section. The budget request must be based upon the budget director's studies of the operations, plans, and needs of the institution, university unit, or agency.

(6) By November 1, the budget director shall furnish the legislative fiscal analyst with a present law base for each agency and a copy of the documents that reflect the anticipated receipts and other means of financing the base budget and present law base for each fiscal year of the ensuing biennium. The material must be in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

(7) By November 12, the budget director shall furnish the legislative fiscal analyst with the documents, in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst, that reflect expenditures to the second level, as provided in 17-1-102(3), by funding source and detailed by accounting entity.

(8) By November 15, the proposed pay plan schedule and the information technology summary required by 17-7-111(4), a preliminary budget that meets the statutory requirements for submission of the budget to the legislature, and a summary of the preliminary budget designed for distribution to members and members-elect of the legislature must be submitted to the legislative fiscal analyst.

(9) By December 15, the budget director shall submit a preliminary budget to the governor and to the governor-elect, if there is one, as provided in 17-7-121, and shall furnish the legislative fiscal analyst with all amendments to the preliminary budget.

(10) By January 7, recommended changes proposed by a governor-elect must be transmitted to the legislative fiscal analyst and the legislature as provided in 17-7-121.

History: En. Sec. 2, Ch. 158, L. 1959; amd. Sec. 1, Ch. 91, L. 1961; amd. Sec. 1, Ch. 223, L. 1969; amd. Sec. 2, Ch. 282, L. 1974; R.C.M. 1947, 79-1013(part); amd. Sec. 1, Ch. 290, L. 1981; amd. Sec. 2, Ch. 666, L. 1983; amd. Sec. 2, Ch. 332, L. 1993; amd. Sec. 7, Ch. 347, L. 1997; amd. Sec. 38, Ch. 313, L. 2001; (2)(b)En. Sec. 9, Ch. 507, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 313 in (8) near beginning inserted reference to the information technology summary. Amendment effective July 1, 2001.

Effective Date: Section 10, Ch. 507, L. 2001, provided that subsection (2)(b) of this section is effective May 1, 2001.

17-7-113. Inquiries and investigations by budget director. The budget director or his designated representative shall make such further inquiries and investigations as he considers necessary as to any item included in the report and estimates furnished by any department, agency, or institution. In making such investigations, he shall be allowed his travel expenses as provided for in 2-18-501 through 2-18-503, as amended, in visiting any institution or department in the state.

History: En. Sec. 5, Ch. 158, L. 1959; amd. Sec. 5, Ch. 282, L. 1974; amd. Sec. 18, Ch. 453, L. 1977; R.C.M. 1947, 79-1016(part).

Cross-References

Public employees' travel, meals, and lodging, 2-18-501 through 2-18-503.

17-7-114. Repealed. Sec. 82, Ch. 545, L. 1995.

History: En. Sec. 1, Ch. 433, L. 1993.

17-7-115 through 17-7-120 reserved.

17-7-121. Preliminary budget preparation and submission to governor and governor-elect. (1) Upon receipt of the completed forms and other available data and information, the budget director shall examine the same for the purpose of determining the necessity of the disbursements and funds requested and shall, on or before the date established in 17-7-112, submit in writing to the governor and to the governor-elect, if there is one, a preliminary budget for the ensuing biennium containing the detailed information required to be set forth in the budget to be submitted by the governor to the legislature.

(2) If requested by the governor-elect, the governor shall incorporate in the budget, as a separate section, the estimates, comments, and recommendations that the governor-elect may wish to make, and by the date established in 17-7-112, this section of the budget must be transmitted to the legislature and the legislative fiscal analyst without change. It is the duty of the governor-elect in recommending changes to show a balance between proposed disbursements and anticipated receipts.

History: En. Sec. 3, Ch. 158, L. 1959; amd. Sec. 3, Ch. 282, L. 1974; R.C.M. 1947, 79-1014; amd. Sec. 8, Ch. 347, L. 1997.

17-7-122. Preparation of budget. (1) The governor shall, following the receipt of the preliminary budget from the budget director, have prepared a budget for the ensuing biennium and shall submit the budget to the legislative fiscal analyst in accordance with 17-7-112 for inclusion in the combined governor's budget and budget analysis report.

(2) Legislative branch budget proposals must be included in the budget submitted by the governor without changes.

(3) Judicial branch budget proposals must be included in the budget submitted by the governor, but expenditures above the current base budget need not be part of the balanced financial plan pursuant to 17-7-123.

History: (1)En. Sec. 4, Ch. 158, L. 1959; amd. Sec. 15, Ch. 147, L. 1963; amd. Sec. 4, Ch. 282, L. 1974; Sec. 79-1015, R.C.M. 1947; (2)En. Sec. 2, Ch. 158, L. 1959; amd. Sec. 1, Ch. 91, L. 1961; amd. Sec. 1, Ch. 223, L. 1969; amd. Sec. 2, Ch. 282, L. 1974; Sec. 79-1013, R.C.M. 1947; R.C.M. 1947, 79-1015(part), 79-1013(part); amd. Sec. 1, Ch. 657, L. 1991; amd. Sec. 3, Ch. 12, Sp. L. November 1993; amd. Sec. 57, Ch. 545, L. 1995; amd. Sec. 9, Ch. 347, L. 1997.

Cross-References

Budget and messages, Art. VI, sec. 9, Mont. Const.

17-7-123. Form of executive budget. (1) The budget submitted must set forth a balanced financial plan for funds subject to appropriation and enterprise funds that transfer profits to the general fund or to accounts subject to appropriation for each accounting entity and for the state government for each fiscal year of the ensuing biennium. The base level plan must consist of:

(a) a consolidated budget summary setting forth the aggregate figures of the budget in a manner that shows a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by explanatory schedules or statements.

(b) budget and full-time equivalent personnel position comparisons by agency, program, and appropriated funds for the current and subsequent biennium;

(c) the departmental mission and a statement of goals and objectives for the department;

(d) base budget disbursements for the completed fiscal year of the current biennium, estimated comparable disbursements for the current fiscal year, and the proposed present law base budget plus new proposals, if any, for each department and each program of the department;

(e) a statement containing recommendations of the governor for the ensuing biennium by program and disbursement category, including:

(i) explanations of appropriation and revenue measures included in the budget that involve policy changes;

(ii) matters not included as a part of the budget bill but included as a part of the executive budget, such as the state employee pay plan, programs funded through separate appropriations measures, and other matters considered necessary for comprehensive public and legislative consideration of the state budget; and

(iii) a summary of budget requests that include proposed expenditures on information technology resources. The summary must include funding, program references, and a decision package reference;

(f) a report on:

(i) enterprise funds not subject to the requirements of subsections (1)(a) through (1)(e), including retained earnings and contributed capital, projected operations and charges, and projected fund balances; and

(ii) fees and charges in the internal service fund type, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balances. Fees and charges in the internal service fund type must be approved by the legislature in the general appropriations act. Fees and charges in a biennium may not exceed the level approved by the legislature in the general appropriations act effective for that biennium.

(g) any other financial or budgetary material agreed to by the budget director and the legislative fiscal analyst.

(2) The statement of departmental goals and objectives and the schedule for each fund required in 17-7-111(3)(b) of the executive budget are not required to be printed but must be available in the office of budget and program planning and on the internet.

History: En. Sec. 4, Ch. 158, L. 1959; amd. Sec. 15, Ch. 147, L. 1963; amd. Sec. 4, Ch. 282, L. 1974; R.C.M. 1947, 79-1015(part); amd. Sec. 2, Ch. 596, L. 1983; amd. Sec. 22, Ch. 349, L. 1993; amd. Sec. 3, Ch. 12, Sp. L. November 1993; amd. Sec. 2, Ch. 13, Sp. L. November 1993; amd. Sec. 10, Ch. 347, L. 1997; amd. Sec. 2, Ch. 20, L. 1999; amd. Sec. 39, Ch. 313, L. 2001; amd. Sec. 4, Ch. 569, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 313 inserted (1)(e)(iii) relating to a summary of budget requests; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 569 in (1)(c) near end after "objectives for" deleted "each program of"; inserted (2) providing that the statement of departmental goals and objectives and the schedule for each fund need not be printed but must be available in the office of budget and program planning and on the internet; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Balanced budget, Art. VIII, sec. 9, Mont. Const.

Long-range building program, 17-7-204.

17-7-124. Additional budget data. In addition to the budget required in 17-7-123, the governor shall prepare and make available on request a detailed analysis of receipts by accounting entity within each fund type indicating classification and source of funds.

History: En. Sec. 23, Ch. 349, L. 1993; amd. Sec. 11, Ch. 347, L. 1997.

Cross-References

Agency program budgets — form distribution and contents, 17-7-111.

17-7-125 through 17-7-130 reserved.

17-7-131. Legislative action. The presiding officers of the house of representatives and of the senate shall promptly refer the budgets and budget bills to the proper committees. The budget bill for the maintenance of the agencies of state government and the state institutions shall be based upon the budget and proposed budget bill so submitted. The legislature may amend the proposed budget bill, but it may not amend the proposed budget bill so as to affect either the obligations of the state or the payment of any salaries required to be paid by the constitution and laws of the state.

History: En. Sec. 6, Ch. 205, L. 1919; re-en. Sec. 299, R.C.M. 1921; amd. Sec. 4, Ch. 167, L. 1933; re-en. Sec. 299, R.C.M. 1935; Sec. 79-1006, R.C.M. 1947; amd. and redes. 79-1015.1 by Sec. 30, Ch. 326, L. 1974; R.C.M. 1947, 79-1015.1.

Cross-References

Legislative compensation, Art. V, sec. 5, Mont. Const.
Executive compensation, Art. VI, sec. 5, Mont. Const.
Judicial terms and pay, Art. VII, sec. 7, Mont. Const.
Compensation determination, Title 2, ch. 18, part 3.

17-7-132. Right to appear on consideration of budget. The budget director and representatives of agencies expending or applying for state money may and, when requested by either the house of representatives or the senate, shall appear and be heard with respect to any budget bill.

History: En. Sec. 7, Ch. 205, L. 1919; re-en. Sec. 300, R.C.M. 1921; re-en. Sec. 300, R.C.M. 1935; Sec. 79-1007, R.C.M. 1947; amd. and redes. 79-1015.2 by Sec. 31, Ch. 326, L. 1974; R.C.M. 1947, 79-1015.2; amd. Sec. 12, Ch. 347, L. 1997.

17-7-133 through 17-7-137 reserved.

17-7-138. Operating budget. (1) (a) Expenditures by a state agency must be made in substantial compliance with the budget approved by the legislature. Substantial compliance may be determined by conformity to the conditions contained in the general appropriations act and to legislative intent as established in the narrative accompanying the general appropriations act. An explanation of any significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. A significant change may not conflict with a condition contained in the general appropriations act. If the approving authority certifies that a change is time-sensitive, the approving authority may approve the change prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. Except as provided in subsection (2), the expenditure of money appropriated in the general appropriations act is contingent upon approval of an operating budget by August 1 of each fiscal year. An approved original operating budget must comply with state law and conditions contained in the general appropriations act.

(b) For the purposes of this subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(i) the operating budget change exceeds $1 million; or

(ii) the operating budget change exceeds 25% of a budget category and the change is greater than $25,000. If there have been other changes to the budget category in the current fiscal year, all the changes, including the change under consideration, must be used in determining the 25% and $25,000 threshold.

(2) The expenditure of money appropriated in the general appropriations act to the commissioner of higher education for distribution by the board of regents to the university system units, as defined in 17-7-102, is contingent upon approval of a comprehensive operating budget by October 1 of each fiscal year.

(3) The operating budget for money appropriated by the general appropriations act must be separate from the operating budget for money appropriated by another law except a law

appropriating money for the state pay plan or any portion of the state pay plan. The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation. Each operating budget must include expenditures for each agency program, detailed at least by first-level categories as provided in 17-1-102(3). Each agency shall record its operating budget for all funds, other than higher education funds, and any approved changes on the statewide budget and accounting state financial system. Documents implementing approved changes must be signed. The operating budget for higher education funds must be recorded on the university financial system, with separate accounting categories for each source or use of state government funds. State sources and university sources of funds may be combined for the general operating portion of the current unrestricted funds.

History: En. Sec. 8, Ch. 787, L. 1991; amd. Sec. 1, Ch. 8, Sp. L. July 1992; amd. Sec. 1, Ch. 11, L. 1997; amd. Sec. 13, Ch. 347, L. 1997; amd. Sec. 2, Ch. 255, L. 2001; amd. Secs. 5, 13, Ch. 569, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section — Coordination: Chapter 255 in (1)(a) in second sentence near middle after "conformity to" inserted "the conditions contained in the general appropriations act and to", inserted fourth sentence that read: "A significant change may not conflict with a condition contained in the general appropriations act", and in last sentence at end inserted "and conditions contained in the general appropriations act"; and in (3) inserted second sentence that read: "The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation" and inserted last sentence requiring that the forms be signed. Amendment effective April 16, 2001.

Chapter 569 in (1)(b)(i) and (1)(b)(ii) at beginning substituted "the operating budget" for "the expenditure"; in (2) near beginning after "appropriations act to" inserted "the commissioner of higher education for distribution by the board of regents to" and after "approval of" substituted "a comprehensive operating" for "an operating" and deleted former second sentence that read: "All other requirements in this section apply to the university system"; in (3) in third sentence after "operating budget" inserted "for all funds, other than higher education funds" and after "accounting" inserted "state financial", inserted fourth sentence requiring that documents implementing approved changes be signed, deleted former fourth sentence that read: "Forms used for changing an operating budget must reference the current, complete, and approved operating budget, show the proposed changes to the operating budget, and reference any other pending documents to change the operating budget", and inserted fifth and sixth sentences requiring that the operating budget for higher education funds be recorded on the university financial system and allowing state sources and university sources of funds to be combined; and made minor changes in style. Amendment effective July 1, 2001.

Section 13, Ch. 569, L. 2001, a coordination section, provided: "If House Bill No. 533 and [this act] are both passed and approved, then the sentence "The forms must be signed." added to section 17-7-138(3) by House Bill No. 533 is void." House Bill No. 533 was approved as Ch. 255, L. 2001; therefore, the sentence added by amendment to section 17-7-138(3) by House Bill No. 533 is void.

17-7-139. Program transfers. (1) Unless prohibited by law or a condition contained in the general appropriations act, the approving authority may approve agency requests to transfer appropriations between programs within each fund type within each fiscal year. The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation. An explanation of any transfer that involves a significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. If the approving authority certifies that a request for a transfer representing a significant change in agency or program scope, objectives, activities, or expenditures is time-sensitive, the approving authority may approve the transfer prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. All program transfers must be completed within the same fund from which the transfer originated. A request for a transfer accompanied by a justification explaining the reason for the transfer must be submitted by the requesting agency to the approving authority and the office of budget and program planning. Upon approval of the transfer in writing, the approving authority shall inform the legislative fiscal analyst of the approved transfer and the justification for the transfer. If money appropriated for a fiscal year is transferred to another fiscal year, the money may not be retransferred, except that money remaining from projected costs for spring fires estimated in the last quarter of the first year of a biennium may be retransferred.

(2) For the purposes of subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(a) the budget transfer exceeds $1 million; or

(b) the budget transfer exceeds 25% of a program's total operating plan and the transfer is greater than $25,000. If there have been other transfers to or from the program in the current fiscal year, all the transfers, including the transfer under consideration, must be used in determining the 25% and $25,000 threshold.

History: En. Sec. 9, Ch. 787, L. 1991; amd. Sec. 14, Ch. 347, L. 1997; amd. Sec. 1, Ch. 6, L. 1999; amd. Sec. 3, Ch. 255, L. 2001; amd. Sec. 6, Ch. 569, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 255 in (1) in first sentence near beginning after "law" inserted "or a condition contained in the general appropriations act", inserted second sentence that read: "The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation", and in 10th sentence after "approval of the transfer" inserted "in writing". Amendment effective April 16, 2001.

Chapter 569 in (1) at end of last sentence after "retransferred" inserted "except that money remaining from projected costs for spring fires estimated in the last quarter of the first year of a biennium may be retransferred". Amendment effective July 1, 2001.

17-7-140. Reduction in spending. (1) (a) As the chief budget officer of the state, the governor shall ensure that the expenditure of appropriations does not exceed available revenue. Except as provided in subsection (2), in the event of a projected general fund budget deficit, the governor, taking into account the criteria provided in subsection (1)(b), shall direct agencies to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least 1% of all general fund appropriations during the biennium. An agency may not be required to reduce general fund spending for any program, as defined in each general appropriations act, by more than 10% during a biennium. Departments or agencies headed by elected officials or the board of regents may not be required to reduce general fund spending by a percentage greater than the percentage of general fund spending reductions required for the total of all other executive branch agencies. The legislature may exempt from a reduction an appropriation item within a program or may direct that the appropriation item may not be reduced by more than 10%.

(b) The governor shall direct agencies to manage their budgets in order to reduce general fund expenditures. Prior to directing agencies to reduce spending as provided in subsection (1)(a), the governor shall direct each agency to analyze the nature of each program that receives a general fund appropriation to determine whether the program is mandatory or permissive and to analyze the impact of the proposed reduction in spending on the purpose of the program. An agency shall submit its analysis to the office of budget and program planning and shall at the same time provide a copy of the analysis to the legislative fiscal analyst. The office of budget and program planning shall review each agency's analysis, and the budget director shall submit to the governor a copy of the office of budget and program planning's recommendations for reductions in spending. The budget director shall provide a copy of the recommendations to the legislative fiscal analyst at the time that the recommendations are submitted to the governor and shall provide the legislative fiscal analyst with any proposed changes to the recommendations. The legislative finance committee shall meet within 20 days of the date that the proposed changes to the recommendations for reductions in spending are provided to the legislative fiscal analyst. The legislative fiscal analyst shall provide a copy of the legislative fiscal analyst's review of the proposed reductions in spending to the budget director at least 5 days before the meeting of the legislative finance committee. The committee may make recommendations concerning the proposed reductions in spending. The governor shall consider each agency's analysis and the recommendations of the office of budget and program planning and the legislative finance committee in determining the agency's reduction in spending. Reductions in spending must be designed to have the least adverse impact on the provision of services determined to be most integral to the discharge of the agency's statutory responsibilities.

(2) Reductions in spending for the following may not be directed by the governor:

(a) payment of interest and principal on state debt;
(b) the legislative branch;
(c) the judicial branch;
(d) the school BASE funding program, including special education; and
(e) salaries of elected officials during their terms of office.

(3) (a) As used in this section, "projected general fund budget deficit" means an amount, certified by the budget director to the governor, by which the projected ending general fund balance for the biennium is less than 2% of the general fund appropriations for the second fiscal year of the biennium. In determining the amount of the projected general fund budget deficit, the budget director shall take into account revenue, established levels of appropriation, anticipated supplemental appropriations for school equalization aid, and anticipated reversions.

(b) If the budget director determines that an amount of actual or projected receipts will result in an amount less than the amount projected to be received in the revenue estimate established pursuant to 5-18-107, the budget director shall notify the revenue and transportation interim committee of the estimated amount. Within 20 days of notification, the revenue and transportation interim committee shall provide the budget director with any recommendations concerning the amount. The budget director shall consider any recommendations of the revenue and transportation interim committee prior to certifying a projected general fund budget deficit to the governor.

History: En. Sec. 10, Ch. 787, L. 1991; amd. Sec. 1, Ch. 5, Sp. L. July 1992; amd. Sec. 55, Ch. 633, L. 1993; amd. Sec. 42, Ch. 19, L. 1999.

17-7-141. Audit costs. Amounts appropriated for audits conducted under Title 5, chapter 13, may be transferred between fiscal years. Agencies shall reserve enough money in each fund to pay for audit costs and to the maximum extent allowable under federal regulations shall charge audit costs to federal funds.

History: En. Sec. 11, Ch. 787, L. 1991.

17-7-142. Calculation of reversions for funded resident enrollment growth in Montana university system. (1) The reversion calculation in this section is effective only in those years when the legislature funds resident enrollment growth based upon resident enrollment projections and requires a reversion by the Montana university system if the resident enrollment projections are not met.

(2) The reversion must be calculated based upon the marginal funding for each resident FTE identified in the general appropriations act.

(3) The total reversion is calculated based upon the difference between the FTE resident enrollment projection and the actual FTE resident enrollment or the FTE resident enrollment projection and the prior 3-year average FTE resident enrollment, whichever is lower.

History: En. Sec. 1, Ch. 253, L. 2001.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

17-7-143 through 17-7-149 reserved.

17-7-150. Definitions. As used in 17-7-151, the following definitions apply:

(1) "Current biennium" means the biennium during which the legislature is meeting in regular session.

(2) "Next biennium" means the biennium for which the regular session of the legislature makes appropriations.

(3) (a) "State resources" means:
(i) the general fund;
(ii) state special revenue funds other than private funds;
(iii) federal special revenue funds;
(iv) proprietary funds that require an appropriation;
(v) long-range building program appropriations; and
(vi) agency funds distributed to local governments.

(b) The term does not include:

(i) debt service funds;
(ii) capital project funds other than those appropriated;
(iii) internal service or proprietary funds that do not require an appropriation;
(iv) fund transfers;
(v) enterprise funds;
(vi) unrestricted or other university funds;
(vii) agency funds not distributed to local governments;
(viii) private purpose trust funds;
(ix) permanent funds;
(x) pension trust funds;
(xi) noncash accounting entries; and
(xii) private funds deposited in state special revenue accounts.

History: En. Sec. 1, Ch. 74, L. 1997; amd. Sec. 10, Ch. 34, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 34 in definition of state resources in (b)(viii) substituted "private purpose trust funds" for "expendable trust funds" and in (b)(ix) substituted "permanent funds" for "nonexpendable trust funds". Amendment effective July 1, 2001.

17-7-151. Budget performance — comparison. (1) The measure of budget performance is the total actual or estimated expenditure of state resources that reflects the cost of general government operations funded by taxes and fees.

(2) In preparing budget comparisons, the office of budget and program planning and the legislative fiscal division shall compare actual expenditures of state resources in the first year of the current biennium plus appropriations of state resources in the second year of the current biennium to appropriations of state resources in the next biennium. Anticipated reversions may be deducted from appropriated amounts per agreement between the two offices.

(3) The legislative fiscal analyst and the budget director shall enter into an agreement on measurement standards for budget comparisons. The office of budget and program planning and the legislative fiscal division shall use the same methodology to estimate the amounts of statutory appropriations. If there are differences in estimates of revenue or amounts of statutory appropriations, the legislative fiscal analyst shall explain the differences as part of the independent analysis of the executive budget.

(4) Budget comparisons must include the same attributes and methods of calculation. Items that are not appropriated at the beginning of a biennium, such as budget amendments, supplemental appropriations, and emergency appropriations, must be included in budget comparisons, but must be segregated and indicated as noncomparable items.

History: En. Sec. 2, Ch. 74, L. 1997.

Part 2

Long-Range Building Program and Budget

Part Cross-References

General obligation bonds and notes, Title 17, ch. 5, part 8.

17-7-201. Definitions of building and construction. In this part the following definitions apply:

(1) "Building" includes a:

(a) building, facility, or structure constructed or purchased wholly or in part with state moneys;

(b) building, facility, or structure at a state institution;

(c) building, facility, or structure owned or to be owned by a state agency, including the department of transportation.

(2) "Building" does not include a:

(a) building, facility, or structure owned or to be owned by a county, city, town, school district, or special improvement district;

(b) facility or structure used as a component part of a highway or water conservation project.

(3) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.

History: **En. Sec. 14, Ch. 271, L. 1963; amd Sec. 1, Ch. 24, L. 1973; amd. Sec. 81, Ch. 326, L. 1974; R.C.M. 1947, 82-3314; amd. Sec. 3, Ch. 512, L. 1991.**

17-7-202. Preparation of building programs and submission to department of administration. (1) Before July 1 of each even-numbered year, each state agency and institution shall submit to the department of administration, on forms furnished by the department, a proposed long-range building program, if any, for the agency or institution. Each agency and institution shall furnish any additional information requested by the department relating to the utilization of or need for buildings.

(2) The department shall examine the information furnished by each agency and institution and shall gather whatever additional information is necessary and conduct whatever surveys are necessary in order to provide a factual basis for determining the need for and the feasibility of the construction of buildings. The information compiled by the department shall be submitted to the governor before December 1 of each even-numbered year.

History: **En. Sec. 15, Ch. 271, L. 1963; amd. Sec. 82, Ch. 326, L. 1974; R.C.M. 1947, 82-3315(1), (2).**

Cross-References

Construction contracts — general provisions, 18-2-101 through 18-2-105.

17-7-203. Submission to legislature. During the first week of each regular legislative session, the governor shall submit to the legislature:

(1) the requests of all state agencies and institutions compiled in the form of a comprehensive, long-range proposed building program, including:

(a) the purpose for which each building would be used;

(b) the estimated cost of each building, including necessary land acquisition;

(c) the reasons given by the institution or agency for needing each building;

(d) a priority order recommended by the agency or institution for each building;

(e) the recommendation of the institution or agency as to when each building is needed;

(f) any comments of the governor;

(2) a building program proposed by the governor for the forthcoming biennium in the form of a capital construction budget, including:

(a) the purpose for which each building would be used;

(b) the estimated cost of each building and necessary land acquisition;

(c) the reasons for the governor's recommendation to construct each building during the forthcoming biennium;

(d) the proposed method of financing for each building;

(e) any long-range building plans;

(f) any changes in the law necessary to insure an effective, well-coordinated building program for the state.

History: **En. Sec. 15, Ch. 271, L. 1963; amd. Sec. 82, Ch. 326, L. 1974; R.C.M. 1947, 82-3315(3).**

17-7-204. Long-range building program. The executive budget for all state agencies must include detailed recommendations for the state long-range building program presented in order of importance by fund type. Each recommendation must be presented by agency or branch by funding source, with a description of each proposed project, an explanation of the problem to be addressed by the proposed project, alternative methods of addressing the problem, the rationale for the selection of a particular alternative, and a projection of increased operating costs incident to the project for the next three bienniums.

History: **En. 79-1015.1 by Sec. 4, Ch. 460, L. 1975; R.C.M. 1947, 79-1012.4; amd. Sec. 15, Ch. 347, L. 1997.**

Cross-References

Form of executive budget, 17-7-123.
Authority to construct buildings, 18-2-102.
Scheduling of state building program, 18-2-104.

17-7-205. Long-range building program account. (1) There is a long-range building program account in the capital projects fund type.

(2) Cigarette tax revenue deposited in the account pursuant to 16-11-119 must be obligated prior to obligating other funds in the account.

(3) Coal severance taxes allocated to the account under 15-35-108 may be appropriated for the long-range building program or debt service payments on building projects. Coal severance taxes required for general obligation bond debt service may be transferred to the debt service fund.

(4) Interest earnings, project carryover funds, administrative fees, and miscellaneous revenue must be retained in the account.

History: **En. Sec. 3, Ch. 456, L. 1995.**

17-7-206. Maintenance for state buildings. (1) Subject to legislative determination as provided in subsection (2), a major capital project appropriation by the legislature may include an amount for maintenance as a part of the appropriation. The amount appropriated for maintenance must be deposited in the long-range building account for use in future maintenance.

(2) A state building recommended for construction in the report to the legislature required by 17-7-203 may also be recommended as appropriate for the inclusion of an amount for maintenance. For those buildings recommended for construction, the legislature may allocate an amount not to exceed 2% of the appropriated cost for use in maintenance.

(3) This section does not preclude additional funds, including separate appropriations, donations, grants, or other available funds, from being used for the construction or maintenance of state buildings.

History: **En. Sec. 12, Ch. 547, L. 1995.**

17-7-207 through 17-7-210 reserved.

17-7-211. Expansion to be authorized — budget amendment. (1) An existing capital project may not be expanded beyond the scope of the project approved by the legislature unless the expansion of the project is authorized by a long-range building program budget amendment approved by the budget director.

(2) A proposed long-range building program budget amendment must be submitted to the budget director through the architecture and engineering division of the department of administration. The budget director, through a long-range building program budget amendment, may authorize:

(a) the transfer of excess funds appropriated to a capital project within an agency to increase the appropriation of another capital project within that agency; or

(b) financing to expand a project with funds that were not available for consideration by the legislature.

History: **En. Sec. 13, Ch. 787, L. 1991; amd. Sec. 16, Ch. 347, L. 1997.**

17-7-212. Reappropriation of capital projects. The remaining balances on capital projects previously approved by the legislature are reappropriated for the purposes of the original appropriation until the projects are completed.

History: **En. Sec. 14, Ch. 787, L. 1991.**

Part 3
Supplemental Appropriations, Encumbrances, and Reversions

Part Cross-References

Uniform accounting system and expenditure control, 17-1-102.

17-7-301. Authorization to expend during first year of biennium from appropriation for second year — proposed supplemental appropriation defined — limit on second-year expenditures. (1) An agency may make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year of the biennium if authorized by the general appropriations act. An agency that is not authorized in the general appropriations act to make first-year expenditures may be granted spending authorization by the approving authority upon submission and approval of a proposed supplemental appropriation to the approving authority. The proposal submitted to the approving authority must include a plan for reducing expenditures in the second year of the biennium that allows the agency to contain expenditures within appropriations. If the approving authority finds that, due to an unforeseen and unanticipated emergency, the amount actually appropriated for the first fiscal year of the biennium with all other income will be insufficient for the operation and maintenance of the agency during the year for which the appropriation was made, the approving authority shall, after careful study and examination of the request and upon review of the recommendation for executive branch proposals by the budget director, submit the proposed supplemental appropriation to the legislative fiscal analyst.

(2) The plan for reducing expenditures required by subsection (1) is not required if the proposed supplemental appropriation is:

(a) due to an unforeseen and unanticipated emergency for fire suppression;

(b) requested by the superintendent of public instruction, in accordance with the provisions of 20-9-351, and is to complete the state's funding of guaranteed tax base aid, transportation aid, or equalization aid to elementary and secondary schools for the current biennium; or

(c) requested by the attorney general and:

(i) is to pay the costs associated with litigation in which the department of justice is required to provide representation to the state of Montana; or

(ii) in accordance with the provisions of 7-32-2242, is to pay costs for which the department of justice is responsible for confinement of an arrested person in a detention center.

(3) Upon receipt of the recommendation of the legislative finance committee pursuant to 17-7-311, the approving authority may authorize an expenditure during the first fiscal year of the biennium to be made from the appropriation for the second fiscal year of the biennium. Except as provided in subsection (2), the approving authority shall require the agency to implement the plan for reducing expenditures in the second year of the biennium that contains agency expenditures within appropriations.

(4) The agency may expend the amount authorized by the approving authority only for the purposes specified in the authorization.

(5) The approving authority shall report to the next legislature in a special section of the budget the amounts expended as a result of all authorizations granted by the approving authority and shall request that any necessary supplemental appropriation bills be passed.

(6) As used in this part, "proposed supplemental appropriation" means an application for authorization to make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year of the biennium.

(7) (a) Except as provided in subsections (2) and (7)(b), an agency may not make expenditures in the second year of the biennium that, if carried on for the full year, will require a deficiency appropriation, commonly referred to as a "supplemental appropriation".

(b) An agency shall prepare and, to the extent feasible, implement a plan for reducing expenditures in the second year of the biennium that contains agency expenditures within appropriations. The approving authority is responsible for ensuring the implementation of the plan. If, in the second year of a biennium, mandated expenditures that are required by state or federal law will cause an agency to exceed appropriations or available funds, the agency shall reduce all nonmandated expenditures pursuant to the plan in order to reduce to the greatest extent possible the expenditures in excess of appropriations or funding. An agency may not transfer funds between fund types in order to implement a plan.

History: En. Sec. 1, Ch. 82, L. 1961; R.C.M. 1947, 79-1019; amd. Sec. 1, Ch. 11, Sp. L. January 1992; amd. Sec. 1, Ch. 357, L. 1993; amd. Sec. 17, Ch. 347, L. 1997.

Cross-References

Appropriation and disbursement of money from treasury, 17-8-101.

Conditions in appropriation acts, 17-8-103.

17-7-302. Encumbrance of fiscal yearend obligations. (1) Any valid obligation not paid within the fiscal year, including valid written interagency or intra-agency service agreements for systems development, shall be encumbered for payment thereof at the end of each fiscal year in the department of administration's accounts. Except as provided in subsection (2), an appropriation shall be deemed to be encumbered at the time and to the extent that a valid obligation against the appropriation is created.

(2) An appropriation may be encumbered by a written interagency or intra-agency agreement with the department for the alteration, repair, maintenance, or renovation of a building pursuant to the provisions of Title 18, chapter 2. If the appropriation is not encumbered by a valid obligation at the end of the next fiscal year, the appropriation reverts to the fund from which it was originally appropriated.

History: En. Sec. 3, Ch. 84, L. 1955; amd. Sec. 3, Ch. 127, L. 1961; amd. Sec. 2, Ch. 267, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 59-701.2; amd. Sec. 1, Ch. 544, L. 1979; amd. Sec. 1, Ch. 146, L. 1985; amd. Sec. 1, Ch. 60, L. 1987.

17-7-303. Reappropriation of encumbered obligations at end of each fiscal year. Purchase orders issued and accrued expenses approved by the department of administration shall be encumbered at the end of each fiscal year in the department of administration's accounts and are hereby reappropriated for the succeeding fiscal year.

History: En. Sec. 2, Ch. 84, L. 1955; amd. Sec. 1, Ch. 267, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 59-701.1.

17-7-304. Disposal of unexpended appropriations. (1) All money appropriated for any specific purpose except that appropriated for the university system units listed in subsection (2) and except as provided in subsection (4) must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made or may be used to fund the provisions of 2-18-1203 through 2-18-1205 and 19-2-706 in the succeeding year.

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana campuses at Missoula, Butte, Dillon, and Helena and the Montana state university campuses at Bozeman, Billings, Havre, and Great Falls, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, and the bureau of mines and geology with central offices in Butte must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in 17-7-502, to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated.

(4) After the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment, by fund type, and remaining unexpended and unencumbered at the end of the year may be reappropriated to be spent during the following 2 years for any purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning.

History: En. Sec. 2, H.B. 372, p. 16, L. 1895, not published in the codes; re-en. Sec. 304, R.C.M. 1921; re-en. Sec. 304, R.C.M. 1935; amd. Sec. 14, Ch. 147, L. 1963; Sec. 79-1011, R.C.M. 1947; amd. and redes. 79-1015.3 by Sec. 32, Ch. 326, L. 1974; R.C.M. 1947, 79-1015.3; amd. Sec. 6, Ch. 787, L. 1991; amd. Sec. 2, Ch. 5, Sp. L. July 1992; amd. Sec. 31, Ch. 10, L. 1993; amd. Sec. 8, Ch. 23, Sp. L. November 1993; amd. Sec. 8, Ch. 308, L. 1995; amd. Sec. 2, Ch. 361, L. 1997; amd. Sec. 13, Ch. 532, L. 1997; amd. Sec. 7, Ch. 569, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 569 in (4) at beginning of first sentence substituted "After" for "For the 2 years following" and near end before "for any purpose" substituted "reappropriated to be spent during the following 2 years" for "spent". Amendment effective July 1, 2001.

17-7-305. Supplemental appropriations for legislative agencies. Deficiency appropriations, commonly referred to as a "supplemental appropriation", for a legislative branch agency must be included in a separate appropriation bill and may not be included in the bill appropriating money for the operation of the legislature, commonly referred to as the "feed bill".

History: En. Sec. 3, Ch. 618, L. 1979.

17-7-306 through 17-7-310 reserved.

17-7-311. Proposed fiscal year transfer supplemental appropriation — procedure. (1) A proposed supplemental appropriation to transfer appropriations between fiscal years of a biennium and all supporting documentation must be submitted to the legislative fiscal analyst. The governor may not approve a proposed fiscal year transfer supplemental appropriation until the governor receives the legislative finance committee's written report for that proposed fiscal year transfer supplemental appropriation unless:

(a) the report is not received within 90 calendar days from the date the proposed fiscal year transfer supplemental appropriation and supporting documentation were forwarded to the legislative finance committee, in which case the governor may approve the proposed fiscal year transfer supplemental appropriation; or

(b) there has been a waiver of the review and report requirements, as provided in subsection (4).

(2) The legislative fiscal analyst shall review each proposed fiscal year transfer supplemental appropriation submitted by the governor for compliance with statutory requirements and standards and to determine the expenditures that will be reduced in order to contain spending within legislative appropriations. The legislative fiscal analyst shall present a written report of this review to the legislative finance committee. Within 10 days after the legislative finance committee's consideration of the proposed fiscal year transfer supplemental appropriation, the legislative fiscal analyst shall submit the legislative finance committee's report to the governor.

(3) Upon receipt of the legislative finance committee's written report, the governor may approve or deny the proposed fiscal year transfer supplemental appropriation or may return the proposed fiscal year transfer supplemental appropriation to the requesting agency for further information. If the governor has returned the proposed fiscal year transfer supplemental appropriation to the requesting agency and the requesting agency resubmits the proposed fiscal year transfer supplemental appropriation to the governor, all procedures provided in this section apply to the resubmitted proposed fiscal year transfer supplemental appropriation.

(4) (a) If an emergency occurs that poses a serious threat to the life, health, or safety of the public, the legislative fiscal analyst may waive the written review and the legislative finance committee's written report required by this section. After a waiver, the legislative fiscal analyst may complete the written review.

(b) Upon receipt of the waiver, the governor may approve the proposed fiscal year transfer supplemental appropriation.

(c) A waiver affects only the legislative fiscal analyst's written review and the legislative finance committee's written report on the proposed fiscal year transfer supplemental appropriation. All other proposed fiscal year transfer supplemental appropriation requirements and standards remain in effect.

(5) Nothing in this part confers on the legislative finance committee authority to approve or deny a proposed fiscal year transfer supplemental appropriation.

History: En. Sec. 2, Ch. 11, Sp. L. January 1992; amd. Sec. 2, Ch. 357, L. 1993; amd. Sec. 8, Ch. 569, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 569 throughout section in 15 places after "proposed" inserted "fiscal year transfer"; and in (1) near beginning of first sentence after "appropriation" inserted "to transfer appropriations between fiscal years of a biennium". Amendment effective July 1, 2001.

Part 4
Budget Amendments

Part Cross-References

Submission of budget amendments to Legislative Finance Committee, 5-12-401.

17-7-401. Repealed. Sec. 19, Ch. 787, L. 1991.

History: En. Sec. 1, Ch. 536, L. 1983; amd. Sec. 5, Ch. 224, L. 1989; amd. Sec. 15, Ch. 16, L. 1991.

17-7-402. Budget amendment requirements. (1) Except as provided in subsection (7), a budget amendment may not be approved:

(a) by the approving authority, except a budget amendment to spend:

(i) additional federal revenue;

(ii) additional tuition collected by the Montana university system;

(iii) additional revenue deposited in the internal service funds within the department or the office of the commissioner of higher education as a result of increased service demands by state agencies;

(iv) Montana historical society enterprise revenue resulting from sales to the public;

(v) additional revenue that is deposited in funds other than the general fund and that is from the sale of fuel for those agencies participating in the Montana public vehicle fueling program established by Executive Order 22-91;

(vi) revenue resulting from the sale of goods produced or manufactured by the industries program of an institution within the department of corrections; or

(vii) revenue collected for the administration of the state grain laboratory under the provisions of Title 80, chapter 4, part 7;

(b) by the approving authority if the budget amendment contains any significant ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority for the expenditure of money in the state special revenue fund unless an emergency justifies the expenditure or the expenditure is exempt under subsection (5);

(d) by the approving authority unless it will provide additional services;

(e) by the approving authority for any matter of which the requesting agency had knowledge at a time when the proposal could have been presented to an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open to that matter, except when the legislative finance committee is given specific notice by the approving authority that significant identifiable events, specific to Montana and pursuant to provisions or requirements of Montana state law, have occurred since the matter was raised with or presented for consideration by the legislature; or

(f) to extend beyond June 30 of the last year of any biennium, except that budget amendments for federal funds may extend to the end of the federal fiscal year.

(2) A general fund loan made pursuant to 17-2-107 does not constitute a significant ascertainable commitment of present general fund support.

(3) Subject to subsection (1)(f), all budget amendments must itemize planned expenditures by fiscal year.

(4) Each budget amendment must be submitted by the approving authority to the budget director and the legislative fiscal analyst.

(5) Money from nonstate or nonfederal sources that would be deposited in the state special revenue fund and that is restricted by law or by the terms of a written agreement, such as a contract, trust agreement, or donation, is exempt from the requirements of this part.

(6) An appropriation for a nonrecurring item that would usually be the subject of a budget amendment must be submitted to the legislature for approval during a legislative session between January 1 and the senate hearing on the budget amendment bill. The bill may include authority to spend money in the current fiscal year and in both fiscal years of the next biennium.

(7) A budget amendment to spend state funds, other than from the general fund, required for matching funds in order to receive a grant is exempt from the provisions of subsection (1).

History: En. Sec. 2, Ch. 536, L. 1983; amd. Sec. 3, Ch. 433, L. 1993; amd. Sec. 1, Ch. 36, L. 1995; amd. Sec. 58, Ch. 545, L. 1995; amd. Sec. 3, Ch. 556, L. 1995; amd. Sec. 1, Ch. 76, L. 1997; amd. Sec. 14, Ch. 532, L. 1997; amd. Sec. 3, Ch. 11, L. 1999; amd. Sec. 9, Ch. 569, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 569 in (1)(f) at end inserted "except that budget amendments for federal funds may extend to the end of the federal fiscal year"; in (3) at beginning inserted "Subject to subsection (1)(f)"; in (4) deleted former second sentence that read: "The proposed expenditure of money from nonstate or nonfederal sources that is restricted by law must be submitted to the legislative fiscal analyst"; in (6) at beginning of first sentence after "An appropriation" inserted "for a nonrecurring item" and at end after "session" inserted "between January 1 and the senate hearing on the budget amendment bill" and at beginning of second sentence substituted "The bill may include authority to spend money in the current fiscal year and in both fiscal years" for "may not include authority to spend money beyond the first fiscal year"; and made minor changes in style. Amendment effective July 1, 2001.

17-7-403. Budget amendment certification. In approving a budget amendment, the approving authority shall make the following certifications and in addition shall provide all other information required below as an integral part of the certification:

(1) The approving authority shall certify that:

(a) specific additional services will be provided as a result of the expenditures to be permitted under this budget amendment and shall also list each specific service to be so provided;

(b) the specific services to be provided under this budget amendment are necessary;

(c) the agency requesting this budget amendment has no other reasonable alternative available to provide the additional services. The certification must specifically include determinations by the approving authority that the agency cannot provide all or specific parts or amounts of the additional services with existing appropriations or that the agency is unable within its existing appropriations to fund all or part of the additional services from any source lawfully available to it.

(d) the budget amendment makes no ascertainable present or future significant commitment for increased general fund support.

(2) For budget amendments to spend money in the state special revenue fund, except money from nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, the approving authority shall certify that an emergency justifies the expenditure and shall state the specific nature of the emergency, the date on which the requesting agency became aware of the emergency, and the manner in which the requesting agency became aware of the emergency.

History: En. Sec. 3, Ch. 536, L. 1983; amd. Sec. 4, Ch. 433, L. 1993.

17-7-404. Budget amendment procedures. (1) Upon receiving a proposed budget amendment, the approving authority shall immediately forward a copy of the entire budget amendment to the legislative fiscal analyst.

(2) If the approving authority denies the request for a budget amendment, the approving authority shall immediately forward a notice of denial to the legislative fiscal analyst.

(3) If the approving authority intends to make certification of the budget amendment, immediately upon completion of the certification the approving authority shall forward the certification and all supporting documentation to the legislative fiscal analyst. If the approving authority has returned the budget amendment to the requesting agency and the requesting agency resubmits the budget amendment to the approving authority, all procedures set out in this section apply to the resubmitted budget amendment.

(4) This part does not confer any authority on the legislative finance committee to approve or deny budget amendments.

History: En. Sec. 4, Ch. 536, L. 1983; amd. Sec. 1, Ch. 457, L. 1985; amd. Sec. 59, Ch. 545, L. 1995.

17-7-405. Voidness of improperly certified budget amendments. Any budget amendment that is not certified by the approving authority according to the standards and procedures set out in this part may be declared void in its entirety by a court of competent jurisdiction on complaint of the attorney general, the legislature, or the legislative finance committee. No funds may be expended under an improperly certified budget amendment.

History: En. Sec. 5, Ch. 536, L. 1983.

Part 5
Statutory Appropriations

Part Cross-References

Appropriations not to be enacted by initiative, Art. III, sec. 4, Mont. Const.
Appropriations not to be subject of referendum, Art. III, sec. 5, Mont. Const.
State debt, Art. VIII, sec. 8, Mont. Const.
Balanced budget, Art. VIII, sec. 9, Mont. Const.
Disbursement and expenditure, Title 17, ch. 8.

17-7-501. Appropriations — type. There are three types of appropriations within the meaning of "appropriation made by law" as used in Article VIII, section 14, of the Montana constitution:

(1) temporary appropriations enacted by the legislature as part of designated appropriation bills or sections designated as appropriations in other bills;

(2) temporary appropriations made by valid budget amendment; and

(3) statutory appropriations made by permanent law in conformance with 17-7-502.

History: En. Sec. 1, Ch. 703, L. 1985.

17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 69-8-702; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; pursuant to sec. 63(3), Ch. 585, L. 2001, the inclusion of 3-5-901 terminates June 30, 2002; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)*

History: En. Sec. 2, Ch. 703, L. 1985; amd. Sec. 2, Ch. 244, L. 1985; amd. Sec. 11, Ch. 395, L. 1985; amd. Sec. 20, Ch. 635, L. 1985; amd. Sec. 19, Ch. 688, L. 1985; amd. Sec. 14, Ch. 701, L. 1985; amd. Sec. 14, Ch. 720, L. 1985; amd. Sec. 15, HB 861, L. 1985; amd. Sec. 10, HB 922, L. 1985; amd. Sec. 10, Ch. 161, L. 1987; amd. Sec. 2, Ch. 164, L. 1987; amd. Sec. 1, Ch. 265, L. 1987; amd. Sec. 8, Ch. 453, L. 1987; amd. Sec. 3, Ch. 454, L. 1987; amd. Sec. 30, Ch. 457, L. 1987; amd. Sec. 10, Ch. 460, L. 1987; amd. Sec. 21, Ch. 461, L. 1987; amd. Sec. 6, Ch. 465, L. 1987; amd. Sec. 11, Ch. 563, L. 1987; amd. Sec. 10, Ch. 603, L. 1987; amd. Sec. 10, Ch. 607, L. 1987; amd. Sec. 5, Ch. 664, L. 1987; amd. Sec. 14, Ch. 665, L. 1987; amd. Sec. 12, HB 621, L. 1987; amd. Sec. 1,

Ch. 62, L. 1989; amd. Sec. 38, Ch. 262, L. 1989; amd. Sec. 23, Ch. 316, L. 1989; amd. Sec. 7, Ch. 324, L. 1989; amd. Sec. 1, Ch. 408, L. 1989; amd. Sec. 11, Ch. 473, L. 1989; amd. Sec. 13, Ch. 528, L. 1989; amd. Sec. 2, Ch. 530, L. 1989; amd. Sec. 3, Ch. 628, L. 1989; amd. Sec. 62, Ch. 642, L. 1989; amd. Sec. 13, Ch. 672, L. 1989; amd. Sec. 14, Ch. 678, L. 1989; amd. Sec. 10, Ch. 10, Sp. L. June 1989; amd. Sec. 6, Ch. 11, Sp. L. June 1989; amd. Sec. 16, Ch. 16, L. 1991; amd. Sec. 1, Ch. 344, L. 1991; amd. Sec. 2, Ch. 370, L. 1991; amd. Sec. 4, Ch. 394, L. 1991; amd. Sec. 2, Ch. 493, L. 1991; amd. Sec. 1, Ch. 495, L. 1991; amd. Sec. 2, Ch. 567, L. 1991; amd. Sec. 4, Ch. 571, L. 1991; amd. Sec. 1, Ch. 575, L. 1991; amd. Sec. 2, Ch. 600, L. 1991; amd. Sec. 10, Ch. 602, L. 1991; amd. Sec. 19, Ch. 609, L. 1991; amd. Sec. 5, Ch. 641, L. 1991; amd. Sec. 52, Ch. 647, L. 1991; amd. Sec. 1, Ch. 690, L. 1991; amd. Sec. 7, Ch. 701, L. 1991; amd. Sec. 14, Ch. 748, L. 1991; amd. Sec. 7, Ch. 787, L. 1991; amd. Sec. 3, Ch. 819, L. 1991; amd. Sec. 18, Ch. 823, L. 1991; amd. Sec. 2, Ch. 46, L. 1993; amd. Sec. 4, Ch. 69, L. 1993; amd. Sec. 3, Ch. 107, L. 1993; amd. Sec. 5, Ch. 108, L. 1993; amd. Sec. 3, Ch. 127, L. 1993; amd. Sec. 2, Ch. 195, L. 1993; amd. Sec. 2, Ch. 234, L. 1993; amd. Sec. 233, Ch. 265, L. 1993; amd. Sec. 3, Ch. 330, L. 1993; amd. Sec. 2, Ch. 389, L. 1993; amd. Sec. 3, Ch. 395, L. 1993; amd. Sec. 8, Ch. 415, L. 1993; amd. Sec. 4, Ch. 450, L. 1993; amd. Sec. 15, Ch. 452, L. 1993; amd. Sec. 2, Ch. 492, L. 1993; amd. Sec. 11, Ch. 526, L. 1993; amd. Sec. 9, Ch. 534, L. 1993; amd. Sec. 18, Ch. 555, L. 1993; amd. Sec. 4, Ch. 578, L. 1993; amd. Sec. 7, Ch. 581, L. 1993; amd. Sec. 4, Ch. 605, L. 1993; amd. Sec. 13, Ch. 613, L. 1993; amd. Sec. 6, Ch. 625, L. 1993; amd. Sec. 11, Ch. 630, L. 1993; amd. Sec. 3, Ch. 635, L. 1993; amd. Sec. 18, Ch. 10, Sp. L. November 1993; amd. Sec. 2, Ch. 36, Sp. L. November 1993; amd. Sec. 33, Ch. 18, L. 1995; amd. Sec. 3, Ch. 29, L. 1995; amd. Sec. 9, Ch. 176, L. 1995; amd. Sec. 5, Ch. 291, L. 1995; amd. Sec. 20, Ch. 429, L. 1995; amd. Sec. 7, Ch. 439, L. 1995; amd. Sec. 4, Ch. 442, L. 1995; amd. Sec. 2, Ch. 446, L. 1995; amd. Sec. 37, Ch. 451, L. 1995; amd. Sec. 11, Ch. 502, L. 1995; amd. Sec. 24, Ch. 509, L. 1995; amd. Sec. 8, Ch. 526, L. 1995; amd. Sec. 17, Ch. 553, L. 1995; amd. Sec. 2, Ch. 557, L. 1995; amd. Sec. 3, Ch. 276, L. 1997; amd. Secs. 26, 27, Ch. 422, L. 1997; amd. Sec. 1, Ch. 445, L. 1997; amd. Sec. 3, Ch. 461, L. 1997; amd. Sec. 12, Ch. 466, L. 1997; amd. Sec. 12, Ch. 469, L. 1997; amd. Sec. 159, Ch. 480, L. 1997; amd. Sec. 1, Ch. 523, L. 1997; amd. Secs. 15, 39(1)(b), (2)(b), Ch. 532, L. 1997; amd. Sec. 11, Ch. 549, L. 1997; amd. Sec. 46, Ch. 51, L. 1999; amd. Sec. 14, Ch. 83, L. 1999; amd. Sec. 3, Ch. 360, L. 1999; amd. Sec. 12, Ch. 389, L. 1999; amd. Sec. 3, Ch. 497, L. 1999; amd. Sec. 8, Ch. 554, L. 1999; amd. Sec. 6, Ch. 563, L. 1999; amd. Sec. 3, Ch. 10, Sp. L. May 2000; amd. Sec. 29, Ch. 7, L. 2001; amd. Sec. 9, Ch. 414, L. 2001; amd. Sec. 1, Ch. 500, L. 2001; amd. Sec. 3, Ch. 554, L. 2001; amd. Sec. 11, Ch. 567, L. 2001; amd. Sec. 107, Ch. 574, L. 2001; amd. Sec. 6, Ch. 577, L. 2001; amd. Sec. 24, Ch. 585, L. 2001; amd. Sec. 3, Ch. 594, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 7 in (3) deleted "15-34-115" from list of statutory references. Amendment effective October 1, 2001.

Chapter 414 in (3) inserted "2-15-151" in list of statutory references. Amendment effective April 28, 2001, and terminates December 31, 2006.

Chapter 500 in (3) inserted "15-1-113" in list of statutory references. Amendment effective January 1, 2002.

Chapter 554 in (3) inserted "20-9-534" in list of statutory references and deleted "81-5-111" from list of statutory references. Amendment effective July 1, 2001.

Chapter 567 in (3) inserted "80-5-510" in list of statutory references. Amendment effective October 1, 2001.

Chapter 574 in (3) inserted "15-1-121" in list of statutory references and deleted "15-31-702", "16-1-404", "16-1-406", "16-1-411", "19-6-709", "23-5-610", "67-3-205", and "77-1-505" from list of statutory references. Amendment effective July 1, 2001.

Chapter 577 in (3) inserted "69-8-702" in list of statutory references. Amendment effective July 1, 2001.

Chapter 585 in (3) deleted "3-5-901" from list of statutory references. Amendment effective July 1, 2002.

Chapter 594 in (3) inserted "17-3-241" in list of statutory references. Amendment effective January 1, 2002.

Applicability: Section 16, Ch. 414, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

2000 Amendment: Chapter 10 in (3) inserted "15-35-108" and "90-6-710" in list of statutory references; and made minor changes in style. Amendment effective May 22, 2000, and terminates June 30, 2005.

Contingent Termination: Section 10, Ch. 360, L. 1999, provided: "[Sections 2 and 3] [enacting 19-20-604 and amending 17-7-502] terminate when the amortization period for the system's unfunded liability is 10 years or less according to the system's latest actuarial valuation. The teachers' retirement board shall notify the governor and the code commissioner on occurrence of this contingency."

CHAPTER 8

DISBURSEMENT AND EXPENDITURE

Part 1 — Limits on Disbursements and Expenditures

17-8-101. Appropriation and disbursement of money from treasury.
17-8-102. Expenditure procedures — quarterly allotment system.
17-8-103. Expenditures in excess of appropriation unlawful — conditions in appropriation acts.
17-8-104. Civil penalties and remedies for violation.
17-8-105. Definitions applicable to expenditure limitation.
17-8-106. Expenditure limitation — exception.
17-8-107. Limitations on spending deferred revenue — exception.

Part 2 — Claims

17-8-201. Authorizations for disbursements — submission of claim to department of administration.
17-8-202. Preaudit and transmittal of claims.
17-8-203. Minimum refunds.
17-8-204 through 17-8-210 reserved.
17-8-211. Notice required for assignment of claims against state.
17-8-212. Effect of assignment.
17-8-213 through 17-8-220 reserved.
17-8-221 through 17-8-226. Repealed.
17-8-227 through 17-8-230 reserved.
17-8-231. Liability for false claims.
17-8-232 through 17-8-240 reserved.
17-8-241. Definitions relating to interest assessment.
17-8-242. Interest assessed on amounts due.
17-8-243. Source for payment of interest.
17-8-244. Exemptions.

Part 3 — Warrants

17-8-301. State money — how expended by treasurer.
17-8-302. Order in which warrants are drawn.
17-8-303. Warrants — presentation and cancellation.
17-8-304. Payment, registry, and interest.
17-8-305. Cost accounting for warrant.
17-8-306. Issuance of duplicate warrant.
17-8-307. Repealed.
17-8-308. Payment of interest — land grant warrants.
17-8-309 and 17-8-310 reserved.
17-8-311. Payments to local government entities — notice.
17-8-312. Charges for services or supplies among agencies — valid claim.

Chapter Cross-References

Prohibited payments, Art. VIII, sec. 14, Mont. Const.
Treasurer to withhold payment, 2-2-206.

Part 1
Limits on Disbursements and Expenditures

Part Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.
Use of loan proceeds, Art. VIII, sec. 11, Mont. Const.
Prohibited payments, Art. VIII, sec. 14, Mont. Const.
Fiscal note to evidence change in expenditures, 5-4-205.

17-8-101. Appropriation and disbursement of money from treasury. (1) For purposes of complying with Article VIII, section 14, of the Montana constitution, money deposited in the general fund, the special revenue fund type (except money deposited in the treasury from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation), and the capital projects fund type, with the exception of refunds authorized in subsection (4), may be paid out of the treasury only on appropriation made by law.

(2) Subject to the provisions of subsection (8), money deposited in the enterprise fund type, debt service fund type, internal service fund type, private purpose trust fund type, agency fund type, and state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, may be paid out of the treasury:

(a) by appropriation; or

(b) under general laws, or contracts entered into in pursuance of law, permitting the disbursement if a subclass is established on the state financial system.

(3) The pension trust fund type is not considered a part of the state treasury for appropriation purposes. Money deposited in the pension trust fund type may be paid out of the treasury pursuant to general laws, trust agreement, or contract.

(4) Money paid into the state treasury through error or under circumstances such that the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law may be refunded upon the submission of a verified claim approved by the department.

(5) Authority to expend appropriated money may be transferred from one state agency to another, provided that the original purpose of the appropriation is maintained. The office of budget and program planning shall report semiannually to the legislative finance committee concerning all appropriations transferred under the provisions of this section.

(6) Fees and charges for services deposited in the internal service fund type must be based upon commensurate costs. The legislative auditor, during regularly scheduled audits of state agencies, shall audit and report on the reasonableness of internal service fund type fees and charges and on the fund equity balances.

(7) The creation of accounts in the enterprise fund or the internal service fund must be approved by the department, using conformity with generally accepted accounting principles as the primary approval criteria. The department shall report annually to the office of budget and program planning and the legislative finance committee on the nature, status, and justification for all new accounts in the enterprise fund and the internal service fund.

(8) Enterprise and internal service funds must be appropriated if they are used as a part of a program that is not an enterprise or internal service function and that otherwise requires an appropriation. An enterprise fund that transfers its ending fund balance to the general fund is subject to appropriation. The payment of funds into an internal service fund must be authorized by law.

History: En. Sec. 7, Ch. 147, L. 1963; amd. Sec. 2, Ch. 268, L. 1971; amd. Sec. 2, Ch. 321, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-415(1) thru (3); amd. Sec. 1, Ch. 29, L. 1981; amd. Sec. 13, Ch. 281, L. 1983; amd. Sec. 5, Ch. 433, L. 1993; amd. Sec. 4, Ch. 556, L. 1995; amd. Sec. 99, Ch. 42, L. 1997; amd. Sec. 18, Ch. 347, L. 1997; amd. Sec. 16, Ch. 532, L. 1997; amd. Sec. 3, Ch. 20, L. 1999; amd. Sec. 11, Ch. 34, L. 2001; amd. Sec. 10, Ch. 569, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 34 in (2) near beginning of introductory clause after "internal service fund type" substituted "private purpose trust fund type" for "expendable trust fund type". Amendment effective July 1, 2001.

Chapter 569 in (2)(b) at end after "disbursement" inserted "if a subclass is established on the state financial system". Amendment effective July 1, 2001.

Cross-References

Authorization to expend during first year of biennium from appropriation for second year, 17-7-301.

Minimum refunds, 17-8-203.

17-8-102. Expenditure procedures — quarterly allotment system. (1) The department may establish procedures necessary to ensure that expenditures are made and accounted for in accordance with the budget plan authorized by the legislature in the enactment of the appropriations, including but not limited to procedures to accrue expenses incurred in one fiscal period and paid in a subsequent fiscal period and procedures for the issuance of purchase orders or contracts to be paid from succeeding year appropriations that will become available within 3 months from the date of the issuance of the purchase order or contract.

(2) The budget director may, when authorized by the governor, require a quarterly allotment system of expenditure for any office, institution, or agency. The amount of the respective appropriation made by the legislature shall then, except with respect to items of capital outlay and repairs and replacement through the long-range building program, be made available to the office, institution, or agency in quarterly allotments. However, the quarterly allotment shall be based on the requirements of that office, institution, or agency during that quarter based on previous experience of that office, institution, or agency and not on a prorated quarterly basis.

History: En. Sec. 4, Ch. 194, L. 1951; amd. Sec. 1, Ch. 101, L. 1953; amd. Sec. 8, Ch. 158, L. 1959; amd. Sec. 3, Ch. 267, L. 1971; amd. Sec. 45, Ch. 326, L. 1974; R.C.M. 1947, 82-109(3), (4); (2)En. Sec. 1, Ch. 118, L. 1979; amd. Sec. 2, Ch. 118, L. 1979.

Cross-References

Contingent revolving accounts — when established, 17-2-201.

Reappropriation of encumbered obligations at end of each fiscal year, 17-7-303.

Appropriation and disbursement of money from treasury, 17-8-101.

17-8-103. Expenditures in excess of appropriation unlawful — conditions in appropriation acts. (1) It shall be unlawful for the board of trustees, executive board, managerial staff, president, deans and faculty, or any other authority of any state institution maintained in whole or in part by the state or any officer, department, board, commission, or bureau, having charge of the disbursement or expenditure of the income provided by legislative appropriation or otherwise, to expend, contract for the expenditure, or to incur or permit the incurring of any obligation whatsoever, in any one year, in excess of the legislative appropriation, including any approved, authorized, and valid budget amendment, provided for such year or for any supervisory board or authority either directly or indirectly to authorize, direct, or order any such institution, officer, department, board, commission, or bureau to increase any expenditures, except as specifically provided by law. It shall be and is hereby made the duty of any and all of such institutions, officers, departments, boards, commissions, and bureaus to keep such expenditures, obligations, and liabilities within the amount of such legislative appropriation, which includes an approved, authorized, and valid budget amendment.

(2) A condition or limitation contained in an appropriation act shall govern the administration and expenditure of the appropriation until the appropriation has been expended for the purpose set forth in the act or until such condition or limitation is changed by a subsequent appropriation act. In no event does a condition or limitation contained in an appropriation act amend any other statute.

History: En. Sec. 1, Ch. 40, L. 1937; amd. Sec. 2, Ch. 82, L. 1961; amd. Sec. 11, Ch. 343, L. 1977; R.C.M. 1947, 79-901; amd. Sec. 1, Ch. 618, L. 1979; amd. Sec. 8, Ch. 536, L. 1983; (2)En. Sec. 1, Ch. 693, L. 1983.

Cross-References

Contents of appropriation bill, Art. V, sec. 11, Mont. Const.

Authorization to expend during first year of biennium from appropriation for second year, 17-7-301.

Control of expenditures, 20-25-425.

17-8-104. Civil penalties and remedies for violation. (1) (a) Any authority or member of a board of trustees or any person, officer, or employee violating the provisions of 17-8-103(1) is personally liable and the surety or sureties on his bond shall also be liable to the state for the amount of the excess thus unlawfully expended. An action under this subsection (1)(a) may be brought upon complaint of the attorney general, of the legislature by joint resolution, of the legislative finance committee, or of any taxpayer, filed in a district court of this state.

(b) Any authority or member of a board of trustees or any person, officer, or employee violating the provisions of 17-8-103(1) is guilty of misfeasance in office and shall be guilty of wrongdoing and shall be subject to removal from office or from such employment. An action under this subsection (1)(b) may be brought upon complaint of the attorney general, the legislature by joint resolution, or any taxpayer, filed in a district court of this state.

(2) Complaints under subsections (1)(a) and (1)(b) may be combined in a single action.

(3) Remedies and penalties provided by this section may be pursued singly or in any combination.

History: En. Sec. 4, Ch. 40, L. 1937; amd. Sec. 3, Ch. 82, L. 1961; R.C.M. 1947, 79-904; amd. Sec. 2, Ch. 618, L. 1979; amd. Sec. 9, Ch. 536, L. 1983.

Cross-References

General provisions related to official bonds, Title 2, ch. 9, part 5.

Bonds of state officers and employees, Title 2, ch. 9, part 6.

Public offices — vacancies created, 2-16-501.

Notice of removal, 2-16-503.

17-8-105. Definitions applicable to expenditure limitation. As used in 17-8-106, the following definitions apply:

(1) "Montana total personal income" means the current income from all sources received during a particular period of time by persons residing within Montana as determined by the United States department of commerce or its successor agency.

(2) "State expenditures" means the general fund appropriations, the special revenue fund type appropriations, and the cash portion of the appropriations in the capital projects fund type, excluding:

(a) money received from the federal government;
(b) payments of principal and interest on bonded indebtedness;
(c) money paid for unemployment or disability insurance benefits;
(d) money received from the sale of goods or services provided that the purchase of the goods or services is discretionary;
(e) money paid from permanent endowments, constitutional trusts, or pension funds;
(f) proceeds of gifts or bequests made for purposes specified by the donor;
(g) money appropriated for tax relief; and
(h) funds transferred within state government or used to purchase goods for resale.

History: En. Sec. 1, Ch. 514, L. 1981; amd. Sec. 14, Ch. 281, L. 1983.

17-8-106. Expenditure limitation — exception. (1) Except as provided in subsection (2), the state expenditures for a biennium may not exceed the state expenditures for the preceding biennium plus the product of the state expenditures for the preceding biennium and the growth percentage. The growth percentage is the percentage difference between the average Montana total personal income for the 3 calendar years immediately preceding the next biennium and the average Montana total personal income for the 3 calendar years immediately preceding the current biennium.

(2) The legislature may appropriate funds in excess of this limit from the reserve account if:

(a) the governor declares that an emergency exists; and

(b) two-thirds of the members of each house approve a bill stating the amount to be spent in excess of the expenditures limitation established in subsection (1), the source of the excess revenue to be spent, and an intention to exceed the limitation.

(3) Expenditures may exceed the expenditures limitation only for the year or years for which an emergency has been declared.

(4) The legislature is not required to appropriate the full amount allowed in any year under subsection (1).

History: En. Sec. 2, Ch. 514, L. 1981.

Cross-References

Declaration of emergency — effect and termination, 10-3-302.

17-8-107. Limitations on spending deferred revenue — exception. (1) Except as provided in subsection (2), no agency, including any unit of the university system, may expend deferred revenue for current fiscal year operations. For purposes of this section, "deferred revenue" means funds received in one fiscal year but properly allocable and recorded as revenue in the subsequent fiscal year.

(2) The Montana historical society is exempt from the provisions of subsection (1) to the extent that the expenditure of deferred revenue received from magazine subscription fees is necessary to finance current fiscal year operations for the publication of its magazine of western history.

History: En. Sec. 1, Ch. 573, L. 1983; amd. Sec. 1, Ch. 52, L. 1987.

Part 2
Claims

Part Cross-References

State insurance plan and tort claims, Title 2, ch. 9.
Board of Examiners — allocation, 2-15-1007.
Claim settlement by Attorney General, 18-1-412, 18-1-413.
Verification of pleadings, 25-4-203.

17-8-201. Authorizations for disbursements — submission of claim to department of administration. (1) All authorizations for disbursements must be given by the agency concerned, and a record must be kept by the agency of all the authorizations and expenditures. Claims for any disbursement must be submitted to the department of administration.

(2) The department may prescribe the claim form and may establish, in writing, rules governing the preparation, submittal, and processing of claims. All claims must be processed in

the order of their presentation, and the department shall notify the agency of any disapproved claim.

History: (1)En. Sec. 1, Ch. 97, L. 1961; amd. Sec. 46, Ch. 326, L. 1974; 82-109.1, R.C.M. 1947; (2)En. Sec. 3, Ch. 97, L. 1961; amd. Sec. 48, Ch. 326, L. 1974; Sec. 82-109.3, R.C.M. 1947; R.C.M. 1947, 82-109.1, 82-109.3; amd. Sec. 1, Ch. 87, L. 1989; amd. Sec. 9, Ch. 48, L. 1997.

Cross-References

Appropriation and disbursement of money from treasury, 17-8-101.

17-8-202. Preaudit and transmittal of claims. (1) The department of administration is not required to preaudit a liquidated claim against the state. However, the department may preaudit those claims it considers necessary. The agency shall retain the original of all documents that support claims sent to the department. These documents are subject to postaudit by the legislative auditor.

(2) An office or entity of the executive, legislative, or judicial branch of state government may not make any charge against any appropriation unless the balance of the appropriation is available and adequate. If an appropriation is not available for the payment of a claim, the agency shall transmit the claim to the governor for presentation to the legislature.

History: En. Sec. 2, Ch. 97, L. 1961; amd. Sec. 29, Ch. 271, L. 1963; amd. Sec. 1, Ch. 91, L. 1969; amd. Sec. 47, Ch. 326, L. 1974; R.C.M. 1947, 82-109.2; amd. Sec. 1, Ch. 498, L. 1979; amd. Sec. 1, Ch. 88, L. 1985; amd. Sec. 2, Ch. 87, L. 1989; amd. Sec. 1, Ch. 353, L. 1989; amd. Sec. 10, Ch. 48, L. 1997.

Cross-References

Legislative Auditor — powers and duties, 5-13-304.

17-8-203. Minimum refunds. When not specifically provided by law, the department may establish a minimum amount which shall be paid on a refund due from the various agencies of the state, and no refund amounting to less than the established minimum shall be paid except upon the specific written request of the person entitled to receive the refund.

History: En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971; amd. Sec. 50, Ch. 326, L. 1974; R.C.M. 1947, 82-110(4).

Cross-References

Appropriation and disbursement of money from treasury, 17-8-101.

17-8-204 through 17-8-210 reserved.

17-8-211. Notice required for assignment of claims against state. (1) All transfers and assignments made of any claim against the state, or any part of or interest on the claim, except as provided in this section, are void and unenforceable against the state unless the assignee files written notice of the assignment on forms that may be required by the department of administration, together with a true copy of the instrument of assignment.

(2) The department may promulgate rules regarding the form of assignment, the procedures for filing assignments, and the submission of claims covering assigned funds.

(3) Unless otherwise expressly permitted by the department, no more than one assignment of a claim is effective at one time, and an assignment may not be made to more than one party, except that an assignment may be made to one party as agent or trustee for two or more parties. An assignment may not be subject to further assignment.

History: En. Secs. 1 thru 3, Ch. 44, L. 1967; R.C.M. 1947, 83-901, 83-902, 83-903; amd. Sec. 20, Ch. 325, L. 1995.

Cross-References

Filing of claims against state and political subdivisions, 2-9-301.

Contract actions against state, Title 18, ch. 1, part 4.

17-8-212. Effect of assignment. Nothing contained herein shall in any way impair the negotiability of state warrants or preclude employees of the state from authorizing deductions from salaries for employees group insurance programs authorized by law, union dues, or purchase of U.S. government savings bonds.

History: En. Sec. 4, Ch. 44, L. 1967; R.C.M. 1947, 83-904.

Cross-References

Restrictions upon assignment of wages or salary, 31-1-304.

17-8-213 through 17-8-220 reserved.

17-8-221 through 17-8-226. Repealed. Sec. 2, Ch. 88, L. 1985.

Compiler's Comments

Histories of Repealed Sections:

17-8-221. (1)En. Sec. 236, Rev. C. 1907; re-en. Sec. 242, R.C.M. 1921; re-en. Sec. 242, R.C.M. 1935; Sec. 82-1113, R.C.M. 1947; (2)En. Sec. 232 to 253 were enacted as Sections 1 to 21, pp. 183 to 187, L. 1891; re-en. Secs. 680 to 701, Pol. C. 1895; appearing as Secs. 226 to 247, Rev. C. 1907; re-en. Sec. 232, R.C.M. 1921; Cal. Pol. C. Secs. 654-685; re-en. Sec. 232, R.C.M. 1935; amd. Sec. 7, Ch. 97, L. 1961; Sec. 82-1101, R.C.M. 1947; R.C.M. 1947, 82-1101(part), 82-1113.

17-8-222. (1)En. Sec. 228, Rev. C. 1907; re-en. Sec. 234, R.C.M. 1921; re-en. Sec. 234, R.C.M. 1935; amd. Sec. 8, Ch. 97, L. 1961; amd. Sec. 53, Ch. 326, L. 1974; Sec. 82-1105, R.C.M. 1947; (2)En. Sec. 230, Rev. C. 1907; re-en. Sec. 236, R.C.M. 1921; re-en. Sec. 236, R.C.M. 1935; Sec. 82-1107, R.C.M. 1947; (3)En. Sec. 231, Rev. C. 1907; re-en. Sec. 237, R.C.M. 1921; re-en. Sec. 237, R.C.M. 1935; Sec. 82-1108, R.C.M. 1947; R.C.M. 1947, 82-1105, 82-1107, 82-1108.

17-8-223. En. Sec. 237, Rev. C. 1907; re-en. Sec. 243, R.C.M. 1921; re-en. Sec. 243, R.C.M. 1935; R.C.M. 1947, 82-1114.

17-8-224. (1)En. Sec. 238, Rev. C. 1907; re-en. Sec. 244, R.C.M. 1921; re-en. Sec. 244, R.C.M. 1935; Sec. 82-1115, R.C.M. 1947; (2)En. Sec. 239, Rev. C. 1907; re-en. Sec. 245, R.C.M. 1921; re-en. Sec. 245, R.C.M. 1935; Sec. 82-1116, R.C.M. 1947; R.C.M. 1947, 82-1115, 82-1116.

17-8-225. (1)En. Sec. 241, Rev. C. 1907; re-en. Sec. 247, R.C.M. 1921; re-en. Sec. 247, R.C.M. 1935; R.C.M. Sec. 82-1118, R.C.M. 1947; (2)En. Sec. 240, Rev. C. 1907; re-en. Sec. 246, R.C.M. 1921; re-en. Sec. 246, R.C.M. 1935; amd. Sec. 10, Ch. 61, L. 1977; Sec. 82-1117, R.C.M. 1947; R.C.M. 1947, 82-1117, 82-1118.

17-8-226. En. Sec. 242, Rev. C. 1907; re-en. Sec. 248, R.C.M. 1921; re-en. Sec. 248, R.C.M. 1935; R.C.M. 1947, 82-1119.

17-8-227 through 17-8-230 reserved.

17-8-231. Liability for false claims. (1) A person who knowingly presents or causes to be presented a false, fictitious, or fraudulent claim for allowance or payment to any state agency or its contractors forfeits the claim, including any portion that may be legitimate, and in addition is subject to a penalty of not to exceed $2,000 plus double the damages sustained by the state as a result of the false claim, including all legal costs.

(2) The forfeiture and the penalty may be sued for in the same suit.

History: En. Sec. 2, Ch. 151, L. 1981.

Cross-References

False claims to public agencies — criminal offense, 45-7-210.

17-8-232 through 17-8-240 reserved.

17-8-241. Definitions relating to interest assessment. As used in 17-8-242 through 17-8-244, the following definitions apply:

(1) "Services" means the furnishing of labor, time, or effort, including construction services, purchased or contracted for by the state or any agency thereof.

(2) "Supplies" means all personal property purchased, leased, or contracted for by the state or any agency thereof, including leases of equipment. The term also includes leases of buildings or other real property by the state or any agency thereof.

History: En. Sec. 1, Ch. 484, L. 1983.

Cross-References

State purchasing — general provisions, Title 18, ch. 4.

17-8-242. Interest assessed on amounts due. (1) Except as provided in 17-8-244, a state agency shall pay simple interest at the rate of 0.05% each day on amounts due for supplies and services received if the agency fails to make timely payment.

(2) For purposes of this section, payment is timely if a warrant is mailed or is otherwise made available to the payee when due and for the amount specified in the applicable contract or agreement. If no date is specified in the applicable contract or agreement, payment is timely if paid within 30 days after receipt of a properly completed invoice, addressed to the payer agency, or receipt of the supplies or services by the agency, whichever is later.

History: En. Sec. 2, Ch. 484, L. 1983.

Cross-References

Legal interest, 31-1-106.

17-8-243. Source for payment of interest. Any interest owing under 17-8-242 must be paid from funds designated for administrative costs of the agency receiving the supplies and services unless the delay was caused by a different agency, and then the interest must be paid from the administrative costs of that agency.

History: En. Sec. 4, Ch. 484, L. 1983.

17-8-244. Exemptions. Section 17-8-242 does not apply to the following:

(1) interagency or intergovernmental transactions;

(2) claims subject to a good faith dispute brought before a government agency or before a court. Interest in a proceeding subject to this subsection is governed by 18-1-404.

(3) delinquencies because of natural disasters, disruptions in postal or delivery service, work stoppage because of labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the payer agency;

(4) wages due and payable to state employees or payments from any state retirement system created pursuant to Title 19; or

(5) claims submitted to the state or to its fiscal intermediary by providers of supplies or services under the Montana medicaid or workers' compensation program if reasonable cause for nonpayment exists.

History: En. Sec. 3, Ch. 484, L. 1983; amd. Sec. 39, Ch. 530, L. 1995; amd. Sec. 7, Ch. 181, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 181 in (2) at end inserted "brought before a government agency or before a court. Interest in a proceeding subject to this subsection is governed by 18-1-404"; deleted former (4) that read: "(4) contracts entered into before October 1, 1983"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

Part 3
Warrants

Part Cross-References

Officers prohibited from dealing in warrants, 2-2-204.

Use of facsimile signature on warrants, 2-16-114.

17-8-301. State money — how expended by treasurer. (1) Except as provided in this section, money received by the state treasurer may not be paid out except upon a state warrant issued by the treasurer or on electronic funds transfer authorized by the state treasurer. The state treasurer may not issue a warrant or authorize an electronic funds transfer upon the state treasury except upon a claim approved by the department of administration in accordance with the laws governing the expenditure of state money. However, interest and principal on the public debt may be paid by treasurer's check from the money pledged for payment, and the provisions of this section do not apply to warrants issued upon contingent revolving accounts that are in the custody of the state treasurer.

(2) As used in 2-18-405 and this section, "electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape and that orders, instructs, or authorizes the state treasurer to debit or credit an account.

History: En. Sec. 2, Ch. 112, L. 1921; re-en. Sec. 193, R.C.M. 1921; re-en. Sec. 193, R.C.M. 1935; amd. Sec. 6, Ch. 97, L. 1961; amd. Sec. 2, Ch. 152, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-202; amd. Sec. 3, Ch. 101, L. 1989; (2) En. Sec. 1, Ch. 101, L. 1989; amd. Sec. 21, Ch. 325, L. 1995.

Cross-References

General fiscal duties of State Treasurer, 17-1-111.

Contingent revolving accounts — when established, 17-2-201.

17-8-302. Order in which warrants are drawn. All warrants for claims which have been audited by the department of administration and filed in the treasurer's office must be drawn in the order in which they are transmitted by the department of administration.

History: En. Sec. 423, Pol. C. 1895; re-en. Sec. 173, Rev. C. 1907; re-en. Sec. 154, R.C.M. 1921; Cal. Pol. C. Sec. 436; re-en. Sec. 154, R.C.M. 1935; amd. Sec. 5, Ch. 97, L. 1961; R.C.M. 1947, 79-104.

17-8-303. Warrants — presentation and cancellation. (1) State warrants must be presented for payment within the time limits specified as follows:

(a) Except as provided in subsection (1)(b), all warrants drawn by the state treasurer on the state treasury must be presented for payment within 6 months after the date of issue.

(b) Warrants issued for the department of public health and human services that are funded to any extent with federal money must be presented for payment within 180 days after the date of issue.

(2) If the payee or legal holder of any warrant fails to present it for payment within the time specified in subsection (1), the state treasurer shall record the warrant as canceled and the amount must be credited to a separate private purpose trust fund account administered by the treasurer. If the payee or legal owner of a canceled warrant presents it for payment or presents a claim for payment within 4 years from the date of issue, the state treasurer may, upon proper showing by affidavit, issue a new warrant in lieu of the canceled warrant.

(3) Three years and 6 months after cancellation, the warrant must be classed as unclaimed property subject to the provisions of Title 70, chapter 9, part 8. If the payee or legal owner of a canceled warrant presents it for payment or presents a claim for payment, the presentation must be to the department of revenue as provided in 70-9-815.

History: En. Sec. 1, Ch. 80, L. 1907; re-en. Sec. 178, Rev. C. 1907; re-en. Sec. 158, R.C.M. 1921; re-en. Sec. 158, R.C.M. 1935; amd. Sec. 3, Ch. 94, L. 1969; amd. Sec. 1, Ch. 276, L. 1977; R.C.M. 1947, 79-108; amd. Sec. 1, Ch. 84, L. 1987; amd. Sec. 4, Ch. 101, L. 1989; amd. Sec. 1, Ch. 5, L. 1995; amd. Sec. 22, Ch. 325, L. 1995; amd. Sec. 60, Ch. 546, L. 1995; amd. Sec. 30, Ch. 124, L. 1997; amd. Sec. 12, Ch. 34, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 34 in (2) near end of first sentence after "separate" substituted "private purpose trust fund account" for "expendable trust fund account". Amendment effective July 1, 2001.

17-8-304. Payment, registry, and interest. (1) The state treasurer shall, on the presentation of state warrants regularly issued, pay the warrants out of any funds available for the payments, and in the event that there are no funds available for the payment, the treasurer shall register each warrant in a book or register to be kept for that purpose, entering the date of issue, date of registration, name in whose favor the warrant is drawn, and the number and amount of the warrant and endorse on each warrant registered, on its face, "presented for payment and not paid for want of funds and registered in this office this .... day of ....", inserting the date of registration. The treasurer shall sign the book or register. All warrants must be redeemed and paid in the order of their registration.

(2) This section does not apply to any warrants issued on account of any land grant fund or by virtue of any special act authorizing the issuance of warrants.

History: (1)En. Sec. 1, p. 98, L. 1899; re-en. Sec. 181, Rev. C. 1907; amd. Sec. 1, Ch. 260, L. 1921; amd. Sec. 1, Ch. 6, Ex. L. 1921; re-en. Sec. 180, R.C.M. 1921; amd. Sec. 1, Ch. 159, L. 1923; amd. Sec. 1, Ch. 111, L. 1925; amd. Sec. 1, Ch. 2, L. 1927; re-en. Sec. 180, R.C.M. 1935; amd. Sec. 5, Ch. 61, L. 1977; 79-208, R.C.M. 1947; (2)En. Sec. 2, P. 99, L. 1899; re-en. Sec. 182, Rev. C. 1907; re-en. Sec. 181, R.C.M. 1921; re-en. Sec. 181, R.C.M. 1935; 79-209 R.C.M. 1947; R.C.M. 1947, 79-208, 79-209; amd. Sec. 2, Ch. 40, L. 1995.

17-8-305. Cost accounting for warrant. The state treasurer may establish a cost accounting system to determine the unit cost of issuing and processing warrants and provide for a system of charges for services rendered in issuing and processing warrants for claims submitted by any department or agency of the state. Funds collected for operation of the state warrant system must be deposited to the credit of an internal service fund and expended for the purposes of paying the processing expenses incurred as a result of the state warrant system.

History: En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907; re-en. Sec. 151, R.C.M. 1921; Cal. Pol. C. Sec. 433; re-en. Sec. 151, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-101(17); amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 23, Ch. 325, L. 1995; amd. Sec. 1, Ch. 473, L. 1995.

17-8-306. Issuance of duplicate warrant. (1) The state treasurer may issue a duplicate warrant whenever any warrant drawn by the state is lost or destroyed. This duplicate warrant must be in the same form as the original, except that it must have plainly printed across its face the word "duplicate".

(2) Whenever a duplicate warrant is issued, the state treasurer may place a stop-payment order on the original warrant.

(3) Whenever the owner or custodian applies for the issuance of a duplicate warrant, the application must include an agreement to indemnify the state and its officers and employees from any loss resulting from the issuance of a duplicate warrant. An indemnity agreement is not required if:

(a) the payee is:

(i) the United States government;

(ii) a state of the United States;

(iii) any agency, instrumentality, or officer of the United States government or of a state, county, city, consolidated government, town, district, or other political subdivision of a state or any officer thereof; or

(b) the owner or custodian is the state of Montana or any agency or officer of the state.

(4) Any loss incurred in connection with the issuance of a duplicate warrant must be charged against the account from which the payment was derived.

History: En. Sec. 1, Ch. 19, L. 1909; re-en. Sec. 159, R.C.M. 1921; re-en. Sec. 159, R.C.M. 1935; amd. Sec. 4, Ch. 94, L. 1969; amd. Sec. 1, Ch. 318, L. 1977; R.C.M. 1947, 79-109; amd. Sec. 1, Ch. 181, L. 1985; amd. Sec. 1, Ch. 50, L. 1987; amd. Sec. 1, Ch. 118, L. 1991; amd. Sec. 1, Ch. 5, Sp. L. November 1993; amd. Sec. 24, Ch. 325, L. 1995; amd. Sec. 11, Ch. 48, L. 1997; amd. Sec. 3, Ch. 243, L. 1997.

17-8-307. Repealed. Sec. 13, Ch. 48, L. 1997.

History: En. Sec. 244, Rev. C. 1907; re-en. Sec. 250, R.C.M. 1921; re-en. Sec. 250, R.C.M. 1935; R.C.M. 1947, 82-1121; amd. Sec. 25, Ch. 325, L. 1995.

17-8-308. Payment of interest — land grant warrants. The interest on all land grant warrants shall be payable on July 1 next succeeding the date of issue and annually thereafter. Whenever there is sufficient money in any of the land grant funds to pay outstanding warrants or interest thereon, the treasurer shall cause to be published a brief notice that said warrants or the interest on particular warrants on which interest would be payable on July 1, describing them by numbers and names of funds, will be forthwith payable; and on the presentation of any such warrants on or at any time after July 1, the treasurer shall pay the interest thereon, endorsing the date of payment and amount paid of each warrant, returning the same to the holder, and he shall keep a register showing the dates and amounts of each interest payment on each warrant in each fund. If any warrants are called for payment, interest thereon shall cease on the date fixed in said notice.

History: En. Sec. 3512, Pol. C. 1895; re-en. Sec. 2204, Rev. C. 1907; amd. Sec. 92, Ch. 147, L. 1909; re-en. Sec. 1917, R.C.M. 1921; re-en. Sec. 1917, R.C.M. 1935; R.C.M. 1947, 79-1501.

17-8-309 and 17-8-310 reserved.

17-8-311. Payments to local government entities — notice. (1) For the purposes of this section the following definitions apply:

(a) "Finance officer" means the county treasurer, city treasurer, town clerk, or the equivalent provided for in Title 7, chapter 3.

(b) "Local government entity" means a public entity that, whether or not governed by the legislative body of the local government, is required by law to conduct financial affairs through the finance officer of a city, town, or county. The term does not include a school district or a conservation district.

(2) All payments made by a state agency to any city, town, county, or local government entity must be payable to the finance officer of the appropriate city, town, or county. If the payment is to be deposited to the credit of a local government entity, the finance officer shall mail a notice of receipt of the payment to the local government entity. When applicable, the finance officer shall deposit the payment in the appropriate fund or account to the credit of the local government entity.

(3) If the state agency is unable to determine if the payee is a government entity, the state agency shall process the claim as if it was not payable to a government entity. The state agency shall also mail a notice of issuance of the payment to the finance officer of the county and city to which the payment was issued.

(4) If a finance officer of a county receives a payment under subsection (2) or a notice of issuance under subsection (3), he shall notify the county clerk and recorder that the payment or notice has been received.

History: En. Sec. 1, Ch. 320, L. 1989.

17-8-312. Charges for services or supplies among agencies — valid claim. (1) Subject to 17-8-242, charges for services and supplies incurred between state agencies are considered a debt that must be paid by the receiving agency as if the amount were owed to a vendor outside of state government.

(2) Agencies shall use all funds at their disposal to pay the bills for specific charges for services or supplies provided by another state agency.

History: En. Sec. 11, Ch. 569, L. 2001.

Compiler's Comments

Effective Date: Section 14, Ch. 569, L. 2001, provided: "[This act] is effective July 1, 2001."

TITLE 18

PUBLIC CONTRACTS

Ch.

1. Public Contracts Generally.
2. Construction Contracts.
3. State Building Leases.
4. Montana Procurement Act.
5. Special Purchasing Conditions.
6. Sales.
7. Printing and Legal Notices.
8. Procurement of Services.

Chapters 9 and 10 reserved.

11. State-Tribal Cooperative Agreements.

CHAPTER 1

PUBLIC CONTRACTS GENERALLY

Part 1 — Preferences and General Matters

18-1-101. Definitions.
18-1-102. State contracts to lowest bidder — reciprocity.
18-1-103. Resident defined.
18-1-104. Repealed.
18-1-105. Repealed.
18-1-106. Department of labor and industry to determine residency of selected contractors — applications for redetermination — determination as prima facie evidence.
18-1-107 through 18-1-109 reserved.
18-1-110. Hiring preference for residents of Indian reservations for state construction projects within reservation — rules.
18-1-111. Impartiality to be shown in letting contracts.
18-1-112. Repealed.
18-1-113. Bidder to submit affidavit — penalty.
18-1-114. Rules.
18-1-115 through 18-1-117 reserved.
18-1-118. Access to records of contracting entities.

Part 2 — Bid Security

18-1-201. Requirement for bidder's security.
18-1-202. Advertisement for bid to specify required security.
18-1-203. Form of security.
18-1-204. Forfeiture — bidder's liability — waiver.
18-1-205. Return of bid security.
18-1-206. Effect of compliance.

Part 3 — Prepayment of Public Contractors

18-1-301. Contractor withdrawals — deposit of obligations.
18-1-302. Servicing of deposited obligations.
18-1-303. Interest or income on deposits to contractor.
18-1-304. Priority of deductions from retained payments and proceeds of deposited obligation.

Part 4 — Contract Actions Against the State

18-1-401. Jurisdiction.
18-1-402. Administrative procedures — exhaustion — time limitations.
18-1-403. Stipulations restricting enforcement void.
18-1-404. Liability of state — interest — costs.
18-1-405 through 18-1-410 reserved.
18-1-411. Practice and procedure.
18-1-412. Service of process upon attorney general.
18-1-413. Litigation — compromise.
18-1-414. Judgments — payment.

Chapter Cross-References

Construction of contracts, Title 1, ch. 4, part 1.
Officers and legislators not to have interest in contracts, 2-2-201.
Transfer of contract rights under executive reorganization, 2-15-135.
Lease of buildings by state, 2-17-101.
Failure to make timely payment — interest assessment on amounts due, 17-8-242.
Attachment in contract actions, 27-18-101.
Injunctions in contract actions, 27-19-103.
Revision and rescission of contracts, Title 28, ch. 2, parts 16 and 17.
Interpretation of contracts, Title 28, ch. 3.
Plain language in contracts, Title 30, ch. 14, part 11.
Gifts to public servants having discretionary function in contract letting, 45-7-104.
False claims to public agencies, 45-7-210.
Contract authority — Transportation Commission, 60-2-111.
Administration of state lands, Title 77.
Contract authority — Department of Agriculture, 80-2-104, 80-7-504.

Part 1
Preferences and General Matters

Part Cross-References

Public participation in awarding contracts, 2-3-103, 2-3-104, 2-3-111.
Veterans' public employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.
Freedom from discrimination in public contracts, 49-3-207.

18-1-101. Definitions. (1) Unless the context requires otherwise, in this title, "department" means the department of administration provided for in Title 2, chapter 15, part 10.

(2) Unless the context requires otherwise, in this part, the following definitions apply:

(a) "Goods" means supplies, equipment, materials, commodities, and specially manufactured products.

(b) "Nonresident bidder" means a bidder whose residence is not in this state as determined under 18-1-103.

(c) (i) "Public agency" means a department, commission, council, board, bureau, committee, institution, agency, government corporation, or other entity, instrumentality, or official of the legislative, executive, or judicial branch of this state and its political subdivisions, including the board of regents and the Montana university system.

(ii) Public agency does not include a political subdivision for purposes of 18-1-102(1)(b).

(d) "Resident bidder" means a bidder whose residence is in this state as determined under 18-1-103.

(e) "Written" means that whenever written or in-writing determinations or documents are required, the public agency responsible for the procurement may specify an appropriate visual medium, such as by computer transmission or by facsimile machine transmission, in the specifications, contract, or rules of the public agency.

History: En. 82-1901.1 by Sec. 57, Ch. 326, L. 1974; R.C.M. 1947, 82-1901.1; amd. Sec. 1, Ch. 512, L. 1987; amd. Sec. 1, Ch. 443, L. 1997; amd. Sec. 8, Ch. 181, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 181 deleted definition of Montana-made that read: ""Montana-made" means manufactured or produced in this state and made with the:

(i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in this state; or

(ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401"; in definition of public agency inserted (ii) providing that a public agency does not include a political subdivision for the purposes of 18-1-102(1)(b); and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

18-1-102. State contracts to lowest bidder — reciprocity. (1) In order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and for construction, repair, and public works of all kinds, a public agency shall award:

(a) a public contract for construction, repair, or public works to the lowest responsible bidder without regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of a nonresident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of this state must be equal to the preference given in the other state or country.

(b) a public contract for the purchase of goods to the lowest responsible bidder without regard to residency. However, a resident must be allowed a preference on a contract against the bid of a nonresident if the state or country of the nonresident enforces a preference for residents. The preference must be equal to the preference given in the other state or country.

(2) The preferences in this section apply:

(a) whether the law requires advertisement for bids or does not require advertisement for bids; and

(b) to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant to federal laws.

History: En. Sec. 1, Ch. 183, L. 1961; amd. Sec. 1, Ch. 197, L. 1969; R.C.M. 1947, 82-1924; amd. Sec. 1, Ch. 468, L. 1985; amd. Sec. 2, Ch. 512, L. 1987; amd. Sec. 1, Ch. 32, L. 1991; amd. Sec. 1, Ch. 306, L. 1999; amd. Sec. 9, Ch. 181, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 181 in (1) at beginning deleted "Except as provided in subsection (1)(b)"; in (1)(b) substituted language requiring a public agency to award a public contract without regard to residency unless a nonresident's state or country allows a preference for residents for former language that read: "a public contract for the purchase of goods, if the goods are comparable in quality and performance, to the lowest responsible resident bidder whose:

(A) bid is not more than 3% higher than that of the lowest responsible nonresident bidder;

(B) offered goods are Montana-made and whose bid is not more than 5% higher than that of the lowest responsible nonresident bidder; or

(C) offered goods are Montana-made and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered goods are not Montana-made.

(b) The transportation commission or the department of transportation may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:

(i) the foreign country in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country; and

(ii) the department of transportation has entered into a reciprocity agreement with the foreign country that addresses:

(A) the equal and fair treatment of bids originating in the United States and in the foreign country;

(B) specific ownership requirements and tax policies in the United States and in the foreign country that may result in the unequal treatment of all bids received, regardless of their origin;

(C) the means by which contractors from both the United States and the foreign country are notified of highway projects and construction projects available for bid; and

(D) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country for projects located in either the United States or the foreign country.

(c) (i) If both subsections (1)(a)(ii)(B) and (1)(a)(ii)(C) are applicable to bids for a contract, the contract must be awarded to the resident bidder whose offered goods are Montana-made if the bid is:

(A) not more than 3% higher than that of a resident bidder whose offered goods are not Montana-made; and

(B) not more than 5% higher than that of the nonresident bidder.

(ii) However, a combination of preferences under this subsection (1)(c) may not exceed 5%"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

Cross-References

Competitive bids for county road contracts, 7-14-2404.
Contracts for bridges, 7-14-2406.
Award of contract by local improvement district, 7-14-2716.
Economic development bonds — preference to Montanans, 17-5-1526, 17-5-1527.
Montana in-state investment — preference to Montana labor, 17-6-325.
Preference of Montana labor in public works — wages — federal exception, 18-2-403.
Small business set-asides, 18-5-304.
Construction with other sections — small business preferences, 18-5-308.
Resident printer preference, 18-7-107.
School districts — architectural contracts with Montana firms encouraged, 20-6-635.
Competitive bidding — highways, 60-2-112.
Industrial development projects — preference to Montanans, 90-5-114.

18-1-103. Resident defined. (1) For the purpose of 18-1-102 and this section, the word "resident" includes actual residence of an individual within this state for a period of more than 1 year immediately prior to bidding.

(2) In a partnership enterprise, limited liability company, or association, the majority of all partners or members must have been actual residents of the state of Montana for more than 1 year immediately prior to bidding.

(3) Domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents, but this qualification may be set aside and a successful bid disallowed when it is shown to the satisfaction of the board, commission, officer, or individual charged with the responsibility for the execution of the contract that the corporation is a wholly owned subsidiary of a foreign corporation or that the corporation was formed for the purpose of circumventing the provisions relating to residence.

History: En. Sec. 2, Ch. 183, L. 1961; amd. Sec. 2, Ch. 197, L. 1969; amd. Sec. 1, Ch. 74, L. 1974; R.C.M. 1947, 82-1925; amd. Sec. 1, Ch. 284, L. 1987; amd. Sec. 58, Ch. 370, L. 1987; amd. Sec. 3, Ch. 512, L. 1987; amd. Sec. 100, Ch. 42, L. 1997; amd. Sec. 10, Ch. 181, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 181 in (1) near beginning after "18-1-102" deleted "18-1-111"; in (2) near beginning inserted "limited liability company"; deleted former (4) that read: "(4) Notwithstanding the foregoing, any bidder on a contract for the purchase of goods, whether an individual, partnership, or corporation, foreign or domestic and regardless of ownership thereof, whose offered goods are Montana-made is a resident for the purpose of 18-1-102, 18-1-111, and this section"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

Cross-References

Residence — rules for determining, 1-1-215.

Bona fide resident of Montana defined, 18-2-401.

18-1-104. Repealed. Sec. 2, Ch. 92, L. 1979.

History: En. Sec. 1, Ch. 217, L. 1967; amd. Sec. 61, Ch. 391, L. 1973; R.C.M. 1947, 82-1925.1(part).

18-1-105. Repealed. Sec. 2, Ch. 92, L. 1979.

History: En. Sec. 1, Ch. 217, L. 1967; amd. Sec. 61, Ch. 391, L. 1973; R.C.M. 1947, 82-1925.1(part).

18-1-106. Department of labor and industry to determine residency of selected contractors — applications for redetermination — determination as prima facie evidence. (1) The department of labor and industry shall determine whether or not certain contractors are residents of the state of Montana within the meaning of 18-1-102 and 18-1-103. Any public agency charged by law with the responsibility for the execution of any contract subject to the provisions of 18-1-102 may request that a determination of resident or nonresident status be made by the department of labor and industry. All requests must specify the name and address of the licensed public contractor for whom a determination of resident or nonresident status is required.

(2) If a determination is made that a public contractor is not a resident but the public contractor later qualifies as a resident, the contractor may apply to the department of labor and industry for a redetermination of residency. If, upon redetermination, the public contractor is found to qualify as a resident, the contractor must be furnished a letter by the department of labor and industry attesting to resident status.

(3) The determination of the department of labor and industry that a public contractor is or is not a resident within the meaning of 18-1-102 and 18-1-103 is prima facie evidence of that fact.

History: En. Sec. 1, Ch. 92, L. 1979; amd. Sec. 1, Ch. 2, L. 1985; amd. Sec. 9, Ch. 558, L. 1995; amd. Sec. 46, Ch. 483, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 483 throughout section substituted references to department of labor and industry for references to department of commerce; and made minor changes in style. Amendment effective July 1, 2001.

18-1-107 through 18-1-109 reserved.

18-1-110. Hiring preference for residents of Indian reservations for state construction projects within reservation — rules. (1) For any contract awarded by a state agency for a state construction project within the exterior boundaries of an Indian reservation, except a project partially funded with federal-aid money from the United States department of transportation or when residency preference laws are specifically prohibited by federal law, there must be inserted in the bid specification and the contract a provision, in language approved by the commissioner of labor and industry, implementing the requirements of this subsection. The bid specification and the contract must provide that a preference in hiring for positions of employment be given to Indian residents of the reservation who have substantially equal qualifications for any position. For the purposes of this section, the definitions in 2-18-111 apply.

(2) The commissioner of labor and industry shall enforce this section, investigate complaints of its violation, and may adopt rules to implement this section.

History: En. Sec. 2, Ch. 506, L. 1991.

18-1-111. Impartiality to be shown in letting contracts. The department may not show any partiality or favoritism not provided for by law in making awards or contracts.

History: En. Sec. 10, Ch. 66, L. 1923; re-en. Sec. 293.10, R.C.M. 1935; amd. Sec. 75, Ch. 326, L. 1974; R.C.M. 1947, 82-1920; amd. Sec. 2, Ch. 284, L. 1987; amd. Sec. 11, Ch. 181, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 181 near middle inserted "not provided for by law" and at end deleted "and shall be absolutely fair and impartial. Where both the bids and quality of goods offered are the same, preference shall be given to articles of local and domestic production and manufacture, and where both the bids and the quality of goods offered are the same, preference shall be given to resident bidders as defined in 18-1-103 over nonresident bidders." Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

Cross-References

Preference of Montana labor in public works — wages — federal exception, 18-2-403.
Construction with other sections — small business preferences, 18-5-308.
Nondiscrimination provision in all public contracts, 49-3-207.

18-1-112. Repealed. Sec. 26, Ch. 181, L. 2001.

History: En. Sec. 3, Ch. 183, L. 1961; amd. Sec. 3, Ch. 197, L. 1969; amd. Sec. 6, Ch. 97, L. 1977; R.C.M. 1947, 82-1926; amd. Sec. 4, Ch. 512, L. 1987.

18-1-113. Bidder to submit affidavit — penalty. (1) A bidder on a public contract for goods who is claiming a preference under this part shall either have on file with or submit to the public agency with its bid an affidavit specifying in detail, as determined by rule by the department, the basis on which the bidder claims the preference.

(2) If the public agency determines that the bidder has submitted a false affidavit under subsection (1), the bidder is disqualified as a bidder for future public contracts for goods with any public agency for a period of 5 years from the date of the determination.

History: En. Sec. 6, Ch. 512, L. 1987.

18-1-114. Rules. The department shall adopt rules necessary to administer the preferences provided in this part. The department's rules apply to all public agencies.

History: En. Sec. 7, Ch. 512, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

18-1-115 through 18-1-117 reserved.

18-1-118. Access to records of contracting entities. Money may not be spent by a state agency under a contract with a nonstate entity unless the contract contains a provision that allows the legislative auditor sufficient access to the records of the nonstate entity to determine whether the parties have complied with the terms of the contract. The access to records is necessary to carry out the functions provided for in Title 5, chapter 13. A state agency may terminate a contract, without incurring liability, for the refusal of a nonstate entity to allow access to records as required by this section.

History: En. Sec. 12, Ch. 787, L. 1991; amd. Sec. 60, Ch. 545, L. 1995; amd. Sec. 2, Ch. 377, L. 1997.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Strict accountability, Art. VIII, sec. 12, Mont. Const.
Fiscal analysis information from state agencies, 5-12-303.
Legislative Auditor — information from state agencies, 5-13-309.

Part 2
Bid Security

Part Cross-References

Rural special improvement districts — bids, 7-12-2131.
Special improvement districts — bids, 7-12-4141.
County road improvement districts — bids, 7-14-2715.
Bids and contractor's bond, 17-5-603, 17-5-613.
Bid security, 18-2-302.
Surety insurance — performance bonds included, 33-1-211.
Surety insurers — may execute performance bonds, 33-26-104.
Highways — bidder's security — contractor's bond, 60-2-113.

18-1-201. Requirement for bidder's security. (1) A "public authority" or "obligee" includes:

(a) the state of Montana or any department (including the department of administration, unless otherwise authorized by express provision of law), institution, board, commission, agency, authority or subordinate jurisdiction thereof;

(b) any county or other political subdivision of this state;

(c) any municipal corporation or authorized subdivision thereof; or

(d) school districts, irrigation districts, or other public authority organized under the laws of the state of Montana.

(2) Except as provided in 18-4-312, in all cases where a public authority or obligee is authorized by law to solicit bids, tenders, or proposals for public works, improvements, or undertakings of any kind or for the purchase of commodities, goods, or property or for the procurement of technical or special services on a bid basis (exclusive of services on the basis of salaries or wages) or for the sale and purchase of bonds, debentures, notes, or any other forms of indebtedness of any such public authority, the respective executive, administrative, or other officers of and acting for such public authority shall require, as a condition precedent to considering any such bids, as evidence of good faith on the part of the bidder, and as indemnity for the benefit of such public authority against the failure or refusal of any bidder to enter into any written contract that may be awarded upon and following acceptance of bid or as a condition precedent to consummating any sale and purchase of any forms of indebtedness, that any bid shall contain a written covenant of indemnity conditioned as herein prescribed and that the bid shall be accompanied by bid security of the nature herein specified for the performance of such covenant.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part); amd. Sec. 1, Ch. 424, L. 1985.

Cross-References

State contracts to lowest resident bidder, 18-1-102.
Indemnity, Title 28, ch. 11, part 3.

18-1-202. Advertisement for bid to specify required security. (1) The advertisement, request, or solicitation for bids or offers must distinctly specify that all bidders, offerors, tenderers, or contractors shall:

(a) whenever bids are solicited other than for purchase of any forms of indebtedness, expressly covenant in any bid that if the bidder is awarded the contract, the bidder will, within the time required as stated in the advertisement or solicitation, enter into a formal contract and give a good and sufficient bond to secure the performance of the terms and conditions of the contract. If a bond is not provided, the bidder shall pay the public authority the difference in money between the amount of the bid of the bidder and the amount for which the public authority legally contracts with another party to perform the work or supply the property, commodities, or services, as the case may be, if the latter amount is in excess of the former.

(b) whenever the bids are solicited for the purchase and sale of any forms of indebtedness of the public authority, expressly covenant that the security accompanying the bid in the amount specified by the public authority must be kept and retained by the public authority as liquidated damages for failure to consummate the purchase of the forms of indebtedness that may be awarded on acceptance of bid and in compliance with the terms of the bid.

(2) The public authority shall distinctly specify in the solicitation or advertisement for bids the penal or other sum fixed by statute to be paid by a bidder failing or refusing as aforesaid whenever the amount of the bid security is fixed by statute. Otherwise, the public authority shall specify the amount, which may not be less than 2% of the principal amount of the indebtedness for a bid for the purchase of indebtedness and 10% of the bid price for any other bid, that it considers reasonably necessary to protect and indemnify the public authority against the failure or refusal of the bidder to enter into the contract or consummate the purchase of indebtedness, as the case may be.

(3) The advertisement, request, or other solicitation for bids or offers must distinctly specify that a bid bond or other form of security specified in 18-1-203 constitutes compliance with the requirement for bid security.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part); amd. Sec. 1, Ch. 85, L. 1979; amd. Sec. 1, Ch. 51, L. 1995.

Cross-References

Damages for breach of contract, 27-1-311.
Indemnity, Title 28, ch. 11, part 3.

18-1-203. Form of security. (1) In all cases under 18-1-202(1), the bidder, offeror, or tenderer shall accompany any bid with either:

(a) lawful money of the United States;

(b) a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a federally chartered or state-chartered bank insured by the federal deposit insurance corporation; or

(c) a bid bond, guaranty bond, or surety bond executed by a surety corporation authorized to do business in the state of Montana. If a financial guaranty bond or surety bond is provided to secure the purchase of indebtedness, the long-term indebtedness of the company executing the financial guaranty bond or surety bond must carry an investment grade rating of one or more nationally recognized independent rating agencies.

(2) The money or, in lieu of money, the bank instruments or bid bonds, financial guaranty bonds, or surety bonds must be payable directly to the public authority soliciting or advertising for bids.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part); amd. Sec. 11, Ch. 184, L. 1983; amd. Sec. 2, Ch. 51, L. 1995.

Cross-References

Suretyship, Title 28, ch. 11, part 4.
Banks — acceptance and issuance of drafts and letters of credit, 32-1-437.
Certified checks, 32-1-441.

18-1-204. Forfeiture — bidder's liability — waiver. (1) Except as provided in subsection (3), if in any instance one or more bids be accepted or a sale of any form of indebtedness is ordered or a contract is awarded, any bidder whose bid is accepted and who shall thereafter refuse to enter into and execute the proposed contract or carry out and consummate the purchase of any form of indebtedness, as stated in the covenant in the bid and herein, shall absolutely forfeit such moneys or bank instruments to the public authority concerned and become immediately liable on the bid bond but not in excess of the penal sum therein stated.

(2) In no event shall the bidder's liability, the liability of the maker of the security instrument, or the liability on the bid bond exceed the amount specified by the public authority in the solicitation or advertisement for bids, whether the amount shall be posted in money, be stated as the amount payable in the security instrument, or as the maximum amount payable in the bid bond.

(3) With respect to bids accepted under Title 18, chapter 2, the department may waive the requirement to forfeit bid security.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part); amd. Sec. 1, Ch. 83, L. 1987.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

18-1-205. Return of bid security. The moneys or bank instruments or bid bonds, as the case may be, shall be returned to those bidders whose bids are not accepted.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part).

18-1-206. Effect of compliance. Nothing contained in this part shall exclude or be construed to excuse compliance with any other requirements for bonds or other or further security after acceptance of bids or following award of contract or excuse compliance with any requirements for performance bonds at any time, as such requirements may be prescribed or authorized by the laws of the state of Montana.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part).

Part 3

Prepayment of Public Contractors

Part Cross-References

Public contractor's tax, Title 15, ch. 50.

Bids and contractor's bond, 17-5-603, 17-5-613.

18-1-301. Contractor withdrawals — deposit of obligations. (1) The contractor under any contract made or awarded by the state of Montana or any department, agency, or political subdivision of the state of Montana, by any county, municipality, or political subdivision of a county or municipality, or by a school district, including any contract for the construction, improvement, maintenance, or repair of any road or highway or the appurtenances to a road or highway, may, from time to time, withdraw the whole or any portion of the sums otherwise due to the contractor under the contract that are retained by the state of Montana or any department, agency, or political subdivision of the state of Montana, by any county, municipality, or political subdivision of a county or municipality, or by a school district pursuant to the terms of the contract, provided the contractor shall deposit with the contracting agency:

(a) United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness, or United States treasury bills;

(b) bonds or notes of the state of Montana;

(c) bonds of any political subdivision of the state of Montana of a market value not exceeding par at the time of deposit; or

(d) certificates of deposit drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana.

(2) Deposited obligations must be at least equal in value to the amount so withdrawn from payments retained under the contract.

(3) Except as provided in subsection (4), all interest accrued in the accounts of deposits required under this section must be paid to the contractor.

(4) The contractor shall extend to the contractor's subcontractors the opportunity to participate in making the deposits required in subsection (1). Interest accrued in deposit accounts in which subcontractors participate must be distributed on a pro rata basis by the contractor to the participating subcontractors. A subcontractor participating in making the deposits required in subsection (1) may not have additional retainage withheld by the contractor.

History: En. Sec. 1, Ch. 194, L. 1969; amd. Sec. 1, Ch. 101, L. 1971; R.C.M. 1947, 82-4101; amd. Sec. 1, Ch. 113, L. 1985; amd. Sec. 1, Ch. 222, L. 1999.

Cross-References

Guaranty, suretyship, and indemnity, Title 28, ch. 11.

18-1-302. Servicing of deposited obligations. After notice to the owner and surety, the contracting agency shall have the power to enter into a contract or agreement with any national bank, state bank, trust company, or safe deposit company located in the state of Montana, designated by the contractor, to provide for the custodial care and servicing of any obligations deposited with it pursuant to this part. Such services shall include the safekeeping of said obligations and the rendering of all services required to effectuate the purposes of this part.

History: **En. Sec. 2, Ch. 194, L. 1969; R.C.M. 1947, 82-4102; amd. Sec. 2, Ch. 113, L. 1985.**

18-1-303. Interest or income on deposits to contractor. (1) The contracting agency or any national bank, state bank, trust company, or safe deposit company located in the state of Montana, designated by the contractor to serve as custodian for the obligations pursuant to 18-1-302, shall collect all interest or income when due on the obligations so deposited and shall pay the same, when and as collected, to the contractor who deposited the obligation.

(2) If deposited in the form of coupon bonds, the contracting agency or the designated custodian, pursuant to 18-1-302, shall deliver each such coupon as it matures to the contractor.

History: **En. Sec. 3, Ch. 194, L. 1969; R.C.M. 1947, 82-4103; amd. Sec. 3, Ch. 113, L. 1985.**

Cross-References

Interest on deposits — conformity with federal law, 17-6-104.

18-1-304. Priority of deductions from retained payments and proceeds of deposited obligation. Any amount deducted by the state of Montana or by any department, agency, or political subdivision thereof pursuant to the terms of a contract from the retained payments otherwise due to the contractor thereunder shall be deducted first from that portion of the retained payments for which no obligation has been substituted, then from the proceeds of any deposited obligation. In the latter case, the contractor shall be entitled to receive the interest, coupons, or income only from those obligations which remain on deposit after such amount has been deducted.

History: **En. Sec. 4, Ch. 194, L. 1969; R.C.M. 1947, 82-4104.**

Part 4
Contract Actions Against the State

Part Cross-References

Claims against state, Title 17, ch. 8, part 2.
Time for appeal in actions involving state, Rule 5, M.R.App.P. (see Title 25, ch. 21).
Time limitation on contract actions, 27-2-202.

18-1-401. Jurisdiction. The district courts of the state of Montana shall have exclusive original jurisdiction to hear, determine, and render judgment on any claim or dispute arising out of any express contract entered into with the state of Montana or any agency, board, or officer thereof.

History: **En. Sec. 1, Ch. 138, L. 1955; R.C.M. 1947, 83-601.**

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

18-1-402. Administrative procedures — exhaustion — time limitations. Whenever any contracting agency of the state of Montana provides a procedure for the settlement of any question or dispute arising between the contractor and said agency, the contractor, before proceeding to bring an action in court under the provisions of this part, must resort to such procedure within the time specified in his contract or, if no time is specified, within 90 days after the question or dispute has arisen, provided:

(1) in the case where a settlement procedure is provided by said contracting agency, all actions authorized hereunder must be commenced within 1 year after a final decision has been rendered pursuant to such settlement procedure; and

(2) in the case where no settlement procedure is provided by said contracting agency, the action must be commenced by the contractor within 1 year after the cause of action has arisen.

History: **En. Sec. 2, Ch. 138, L. 1955; R.C.M. 1947, 83-602.**

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.
Statutes of limitations, Title 27, ch. 2.
Statute of limitations in contracts for sale, 30-2-725.

18-1-403. Stipulations restricting enforcement void. Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the provisions of this part is void.

History: En. Sec. 3, Ch. 138, L. 1955; R.C.M. 1947, 83-603.

Cross-References

Restraints upon legal proceedings void, 28-2-708.

18-1-404. Liability of state — interest — costs. (1) (a) The state of Montana is liable in respect to any contract entered into in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana is not liable for punitive damages.

(b) The state of Montana is liable for interest from the date on which the payment on the contract became due. This liability is retroactive, within the meaning of 1-2-109, and applies to any contract in effect or an action pending on a contract on or after May 1, 1997. If the contract is subject to a good faith dispute brought before a government agency or before a court, the interest rate is 10% simple interest each year, whether due before or after a decision by the government agency or court. If the contract does not specify when interest is payable before a decision, interest must be paid at the time provided in 17-8-242(2). If the contract is not subject to a good faith dispute brought before a government agency or before a court, the interest rate is governed by 17-8-242.

(2) Costs may be allowed as provided in 25-10-711. In all other cases, costs must be allowed in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant. The costs must include attorney fees. The liability for attorney fees is retroactive, within the meaning of 1-2-109, and applies to any contract in effect or an action pending on a contract on or after May 1, 1997.

(3) This section does not apply to a contract governed by Title 19.

History: En. Sec. 4, Ch. 138, L. 1955; R.C.M. 1947, 83-604; amd. Sec. 3, Ch. 402, L. 1979; amd. Sec. 1, Ch. 508, L. 1997; amd. Sec. 1, Ch. 413, L. 1999; amd. Sec. 12, Ch. 181, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 181 in (1)(b) at beginning of third sentence substituted "If the contract is subject to a good faith dispute brought before a government agency or before a court" for "For the purposes of this section" and at end substituted "decision by the government agency or court" for "judgment", in fourth sentence near middle substituted "decision" for "judgment", and inserted fifth sentence providing that a contract not subject to a good faith dispute is subject to an interest rate governed by 17-8-242. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.

Claims against state, Title 17, ch. 8, part 2.

Contractual right to attorney fees treated as reciprocal, 28-3-704.

18-1-405 through 18-1-410 reserved.

18-1-411. Practice and procedure. In actions under the provisions of this part, the forms of process, writs, pleadings, and motions and the practice and procedure, together with the right of appeal to the supreme court of the state of Montana, shall be the same as if the state of Montana were a private person, and provisions for counterclaim and setoff shall be the same as if the state of Montana were a private person.

History: En. Sec. 5, Ch. 138, L. 1955; R.C.M. 1947, 83-605.

Cross-References

Civil Procedure, Title 25.

18-1-412. Service of process upon attorney general. In addition to any other requirement for service of process contained in Rule 4D(2)(h), M.R.Civ.P., the attorney general of the state of Montana is hereby designated as the person upon whom all process shall be served in actions under the provisions of this part.

History: En. Sec. 6, Ch. 138, L. 1955; amd. Sec. 15, Ch. 343, L. 1977; R.C.M. 1947, 83-606(part); amd. Sec. 1, Ch. 58, L. 1979.

Cross-References

Attorney General — general duties, 2-15-501.

18-1-413. Litigation — compromise. The attorney general has full charge of litigation under this part on behalf of the state of Montana. The attorney general is authorized to arbitrate, compromise, or settle any claim cognizable under this part after the institution of any suit under this part, with the approval of the court in which the suit is pending. The provisions of 2-4-603(1) apply to any arbitration, compromise, or settlement made pursuant to this section.

History: En. Sec. 6, Ch. 138, L. 1955; amd. Sec. 15, Ch. 343, L. 1977; R.C.M. 1947, 83-606(part); amd. Sec. 3, Ch. 451, L. 1999.

Cross-References

Attorney General — general duties, 2-15-501.

18-1-414. Judgments — payment. A final judgment shall be the obligation of the state of Montana and shall be paid out of funds appropriated by the legislature next succeeding the date of judgment.

History: En. Sec. 7, Ch. 138, L. 1955; R.C.M. 1947, 83-607.

Cross-References

Claims against state, Title 17, ch. 8, part 2.

CHAPTER 2

CONSTRUCTION CONTRACTS

Part 1 — General Provisions

18-2-101. Definitions of building, costs, and construction.
18-2-102. Authority to construct buildings.
18-2-103. Supervision of construction of buildings.
18-2-104. Scheduling of state building program.
18-2-105. General powers and duties of department of administration.
18-2-106. Pecuniary interest prohibited.
18-2-107. Deposit of capitol building grant revenue.
18-2-108. Compliance with state laws and regulations.
18-2-109 and 18-2-110 reserved.
18-2-111. Policy regarding practice of architecture — preparation of working drawings by department limited.
18-2-112. Appointment of architects and consulting engineers.
18-2-113. Architects on public buildings to be certified.
18-2-114. Seal and signature of architect on plans.
18-2-115. Repealed.
18-2-116 through 18-2-120 reserved.
18-2-121. Engineer or land surveyor to supervise project.
18-2-122. Plans to bear seal.
18-2-123. Payment of contractors and subcontractors.

Part 2 — Performance, Labor, and Materials Bonds

18-2-201. Security requirements.
18-2-202. Failure to require security — waiver.
18-2-203. Amount and terms of security.
18-2-204. Right of action on security — notice.
18-2-205. Effect of dealing with subcontractor.
18-2-206. Notice to contractor concerning subcontractor.
18-2-207. Costs — attorney fees.
18-2-208. Exceptions.

Part 3 — Contract Requirements and Restrictions

18-2-301. Bids required — advertising.
18-2-302. Bid security — waiver — authority to submit.
18-2-303. Construction bids — minimum requirements — effect of failure to comply.
18-2-304 and 18-2-305 reserved.
18-2-306. Time of final acceptance and final payment on construction contracts — interest.
18-2-307 through 18-2-310 reserved.
18-2-311. Repealed.
18-2-312. Excusable delays.
18-2-313. Contract provisions necessary for federal funds.
18-2-314. Cost-plus system invalid.

18-2-315. State purchasing not affected.
18-2-316. Limit on retainage for public contracts.

Part 4 — Special Conditions—Labor

18-2-401. Definitions.
18-2-402. Standard prevailing rate of wages.
18-2-403. Preference of Montana labor in public works — wages — tax-exempt project — federal exception.
18-2-404. Approval of public works contract — bond.
18-2-405. Repealed.
18-2-406. Posting wage scale and fringe benefits.
18-2-407. Forfeiture for failure to pay standard prevailing wage.
18-2-408. Renumbered 18-2-432 by Code Commissioner, 1985.
18-2-409. Montana residents to be employed on state construction contracts.
18-2-410 reserved.
18-2-411. Creation of prevailing wage rate districts.
18-2-412. Method for payment of standard prevailing wage.
18-2-413 through 18-2-420 reserved.
18-2-421. Notice.
18-2-422. Bid specification and public works contract to contain standard prevailing wage rate and payroll record notification.
18-2-423. Submission of payroll records.
18-2-424. Enforcement.
18-2-425. Prohibition — project labor agreement.
18-2-426 through 18-2-430 reserved.
18-2-431. Rulemaking authority.
18-2-432. Penalty for violation.

Chapter Cross-References

County contracts, Title 7, ch. 5, part 23.

Contract authority — housing authority, Title 7, ch. 15.

Public contractor's tax, Title 15, ch. 50.

Interest assessed on amounts overdue, 17-8-242.

Construction authority — Regents, 20-25-402.

Veterans' public employment preference, Title 39, ch. 29.

Persons with disabilities public employment preference, Title 39, ch. 30.

Gifts to public servants having discretionary function in contract letting, 45-7-104.

Illegal interests in contracts, 45-7-401.

Freedom from discrimination in public contracts, 49-3-207.

State contractors to comply with safety codes, 50-71-103.

Construction authority — Department of Transportation, 60-3-101.

Construction authority — Department of Transportation — airports, 67-2-403.

Construction authority — drainage districts, 67-11-103, 67-11-201.

Contract authority of public bodies to acquire open-space land, 76-6-109.

Construction authority — soil and water conservation districts, 76-15-215, 76-15-320, 76-15-321, 76-15-401 through 76-15-406, 76-15-501.

Construction authority — Department of Natural Resources and Conservation — waterworks, 85-1-206, 85-1-211.

Construction authority — irrigation districts, 85-7-1901 through 85-7-1908.

Construction authority — Department of Fish, Wildlife, and Parks — fish hatcheries, 87-1-222, 87-3-201.

Contract authority — Board of Housing, 90-6-104.

Part 1
General Provisions

Part Cross-References

Statewide building construction standards, Title 50, ch. 60.

18-2-101. Definitions of building, costs, and construction. In part 1 of this chapter, with the exception of 18-2-104, 18-2-107, 18-2-113, 18-2-114, 18-2-122, and 18-2-123:

(1) "building" includes a building, facility, or structure:

(a) constructed or purchased wholly or in part with state money;

(b) at a state institution;

(c) owned or to be owned by a state agency, including the department of transportation;

(d) constructed for the use or benefit of the state with federal or private money as provided in 18-2-102(2)(d);

(2) "building" does not include a building, facility, or structure:

(a) owned or to be owned by a county, city, town, school district, or special improvement district;

(b) used as a component part of an environmental remediation or abandoned mine land reclamation project, a highway, or a water conservation project, unless the building will require a continuing state general fund financial obligation after the environmental remediation or abandoned mine land reclamation project is completed;

(c) leased or to be leased by a state agency;

(3) "construction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling;

(4) "costs" means those expenses defined in 17-5-401 and 17-5-801.

History: En. Sec. 14, Ch. 271, L. 1963; amd. Sec. 1, Ch. 24, L. 1973; amd. Sec. 81, Ch. 326, L. 1974; R.C.M. 1947, 82-3314; amd. Sec. 4, Ch. 388, L. 1979; amd. Sec. 1, Ch. 67, L. 1981; amd. Sec. 1, Ch. 491, L. 1983; amd. Sec. 1, Ch. 7, L. 1985; amd. Sec. 5, Ch. 372, L. 1985; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 1, Ch. 241, L. 1995; amd. Sec. 1, Ch. 392, L. 1997; amd. Sec. 2, Ch. 470, L. 1999.

Cross-References

Remedial action upon release of hazardous substance, Title 75, ch. 10, part 7.
Reclamation, Title 82, ch. 4.

18-2-102. Authority to construct buildings. (1) Except as provided in subsection (2), a building costing more than $150,000 may not be constructed without the consent of the legislature. Legislative approval of repair and maintenance costs as part of an agency's operating budget constitutes the legislature's consent. When a building costing more than $150,000 is to be financed in a manner that does not require legislative appropriation of money, the consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building and is authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be made from the funds for an uncompleted capital project unless the project is under the supervision of the same agency.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in 20-25-302 if they are to be financed wholly from the revenue from the facility.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money if the construction of the building will not result in any new programs.

(d) The department of military affairs, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money on federal land for the use or benefit of the state.

History: En. Sec. 16, Ch. 271, L. 1963; amd. Sec. 2, Ch. 13, L. 1967; amd. Sec. 83, Ch. 326, L. 1974; R.C.M. 1947, 82-3316; amd. Sec. 2, Ch. 7, L. 1985; amd. Sec. 1, Ch. 518, L. 1993; amd. Sec. 2, Ch. 241, L. 1995; amd. Sec. 1, Ch. 249, L. 1997.

Cross-References

Duties of Department of Military Affairs, 10-1-102, 10-3-105.
Long-range building program bonds, Title 17, ch. 5, part 4.
Employment security building bonds, Title 17, ch. 5, part 6.
Long-range building program and budget, Title 17, ch. 7, part 2.
Revenue-producing facilities — powers of Regents, 20-25-302.
Art for state buildings, Title 22, ch. 2, part 4.

18-2-103. Supervision of construction of buildings. (1) For the construction of a building costing more than $150,000, the department shall:

(a) review and accept all plans, specifications, and cost estimates prepared by architects or consulting engineers;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all money;

(c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of the bid amount;

(d) review and approve all change orders; and

(e) accept the building when completed according to accepted plans and specifications.

(2) The department may delegate on a project-by-project basis any powers and duties under subsection (1) to other state agencies, including units of the Montana university system, upon terms and conditions specified by the department.

(3) Before a contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(4) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision when proposed construction costs are $75,000 or less. However, with respect to a project having a proposed cost of $75,000 or less but more than $25,000, the agency awarding the contract shall procure at least three informal bids from contractors registered in Montana, if reasonably available.

(5) For the construction of buildings owned or to be owned by a school district, the department shall, upon request, provide inspection to ensure compliance with the plans and specifications for the construction of the buildings. "Construction" includes construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services must be provided at a cost to be contracted for between the department and the school district, with the receipts to be deposited in the department's construction regulation account in a state special revenue fund.

(6) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through (3).

(7) The department of military affairs may act as the contracting agency for buildings constructed under the authority of 18-2-102(2)(d). However, the department of administration may agree to act as the contracting agency on behalf of the department of military affairs. Montana law applies to any controversy involving a contract.

History: En. Sec. 17, Ch. 271, L. 1963; amd. Sec. 2, Ch. 264, L. 1969; amd. Sec. 2, Ch. 24, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 487, L. 1977; R.C.M. 1947, 82-3317; amd. Sec. 1, Ch. 16, L. 1979; amd. Sec. 15, Ch. 281, L. 1983; amd. Sec. 2, Ch. 491, L. 1983; amd. Sec. 3, Ch. 7, L. 1985; amd. Sec. 1, Ch. 137, L. 1985; amd. Sec. 1, Ch. 466, L. 1985; amd. Sec. 1, Ch. 467, L. 1985; amd. Sec. 1, Ch. 648, L. 1985; amd. Sec. 1, Ch. 350, L. 1989; amd. Sec. 2, Ch. 518, L. 1993; amd. Sec. 2, Ch. 249, L. 1997; amd. Sec. 1, Ch. 303, L. 1999.

Cross-References

Long-range building program bonds, Title 17, ch. 5, part 4.
Bids required — advertising, 18-2-301.
School districts — conflicts of interest, letting contracts, and calling for bids, 20-9-204.
Contracts and Other Obligations, Title 28.

18-2-104. Scheduling of state building program. The department of administration shall, by careful advance planning, ordering of construction priorities, consultation with architects, and timing of bid lettings, direct the building program of the state in such a manner as to reduce to a minimum the effects of weather on construction and to stabilize as far as possible the work opportunities of the construction labor force.

History: En. Sec. 1, Ch. 116, L. 1967; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 78-910.

Cross-References

Long-range building program bonds, Title 17, ch. 5, part 4.

18-2-105. General powers and duties of department of administration. In carrying out powers relating to the construction of buildings, the department of administration may:

(1) inspect buildings not under construction;

(2) contract with the federal government for advance planning funds;

(3) transfer funds and authority to agencies and accept funds and authority from agencies;

(4) purchase, lease, and acquire by exchange or otherwise, land and buildings in Lewis and Clark County and equipment and furnishings for the buildings;

(5) issue and sell bonds and other securities;

(6) maintain an inventory of all buildings;

(7) appoint a project representative to supervise architects' and consulting engineers' inspection of construction of buildings to ensure that all construction is in accordance with the contracts, plans, and specifications. The cost of supervision may be charged against money available for construction.

(8) negotiate deductive changes, not to exceed 7% of the total cost of a project, with the lowest responsible bidder when the lowest responsible bid causes the project cost to exceed the appropriation or with the lowest responsible bidders, if multiple contracts will be awarded on the project, when the total of the lowest responsible bids causes the project cost to exceed the appropriation. A bidder is not required to negotiate a bid but is required to honor the bid for the time specified in the bidding documents. The department may terminate negotiations at any time.

History: En. Sec. 18, Ch. 271, L. 1963; amd. Sec. 1, Ch. 203, L. 1965; amd. Sec. 84, Ch. 326, L. 1974; R.C.M. 1947, 82-3318; amd. Sec. 1, Ch. 291, L. 1985; amd. Sec. 3, Ch. 518, L. 1993; amd. Sec. 3, Ch. 249, L. 1997.

Cross-References

Property management, Title 2, ch. 17.

Contract provisions necessary for federal funds, 18-2-313.

18-2-106. Pecuniary interest prohibited. (1) The director of administration and the state architect may not have a direct or indirect pecuniary interest in any contract, transaction, or project involving the construction of a building.

(2) An employee of the department who is directly responsible for construction procurement may not have a direct pecuniary interest in a contract for the construction of a building unless the contract is awarded through a competitive procurement procedure.

History: En. Sec. 21, Ch. 271, L. 1963; amd. Sec. 85, Ch. 326, L. 1974; R.C.M. 1947, 82-3321; amd. Sec. 2, Ch. 303, L. 1999.

Cross-References

Standards of conduct for public employees, Title 2, ch. 2.

Illegal interests in contracts, 45-7-401.

18-2-107. Deposit of capitol building grant revenue. (1) The state treasurer shall deposit in a capital projects fund all revenue from the capitol building land grant after any deductions made under 77-1-109 and Title 77, chapter 1, part 6.

(2) The funds must be held and dedicated for the purpose of constructing capitol buildings or additions to buildings in accordance with the provisions of section 12 of The Enabling Act.

History: (1)En. Sec. 1, Ch. 120, L. 1943; amd. Sec. 49, Ch. 147, L. 1963; Sec. 78-501, R.C.M. 1947; (2)En. Sec. 3, Ch. 120, L. 1943; amd. Sec. 50, Ch. 147, L. 1963; Sec. 78-503, R.C.M. 1947; R.C.M. 1947, 78-501, 78-503; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 6, Ch. 533, L. 1993; amd. Sec. 4, Ch. 122, L. 1999.

Cross-References

Deposit of funds in hands of State Treasurer, 17-6-101.

18-2-108. Compliance with state laws and regulations. All buildings built or leased or purchased under this title must comply with all laws, safety codes, and rules of the state of Montana.

History: En. 82-3315.8 by Sec. 8, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.8.

Cross-References

Building construction standards, Title 50, ch. 60.

18-2-109 and 18-2-110 reserved.

18-2-111. Policy regarding practice of architecture — preparation of working drawings by department limited. (1) It is the policy of the state not to engage in the practice of architecture. However, this policy may not be construed as prohibiting the department of administration from:

(a) engaging in preplanning functions necessary to prepare a building program for presentation to the legislature;

(b) supervising construction as provided in 18-2-105(7); or

(c) preparing working drawings for minor projects.

(2) The department of administration may not prepare working drawings for the construction of a building, with the exception of repair or maintenance projects, when the total cost of the construction will exceed $75,000.

History: En. Sec. 20, Ch. 271, L. 1963; amd. Sec. 1, Ch. 371, L. 1977; R.C.M. 1947, 82-3320; amd. Sec. 3, Ch. 491, L. 1983; amd. Sec. 4, Ch. 518, L. 1993; amd. Sec. 1, Ch. 470, L. 1995.

Cross-References

Preparation of building programs and submission to Department of Administration, 17-7-202.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Architecture, Title 37, ch. 65.

18-2-112. Appointment of architects and consulting engineers. The department of administration shall appoint any architect or consulting engineer retained for work on any building to be constructed, remodeled, or renovated by the state of Montana, its boards, institutions, and agencies from a list of three architects or consulting engineers proposed by the state board, institution, or agency where the work is to be done. The department need not appoint an architect or consulting engineer for repair or maintenance projects.

History: En. Sec. 19, Ch. 271, L. 1963; amd. Sec. 1, Ch. 231, L. 1965; amd. Sec. 1, Ch. 83, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 82-3319; amd. Sec. 4, Ch. 491, L. 1983; amd. Sec. 2, Ch. 22, L. 1993; amd. Sec. 5, Ch. 518, L. 1993.

Cross-References

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

18-2-113. Architects on public buildings to be certified. A contract for the employment of or the rendering of professional services by any person relating to the planning or construction of public buildings or other public works or improvements may not be entered into by this state or its agencies or a county, city, or school district in this state unless the person is the holder in good standing of a certificate granted by the board of architects entitling him to practice architecture in this state.

History: En. Sec. 1, Ch. 190, L. 1953; amd. Sec. 32, Ch. 350, L. 1974; amd. Sec. 6, Ch. 544, L. 1977; R.C.M. 1947, 66-113.

Cross-References

Licensing of architects, Title 37, ch. 65, part 3.

18-2-114. Seal and signature of architect on plans. All architectural plans and specifications for public buildings of the state of Montana or any agency thereof or of any county, city, or school district of the state shall bear the seal and signature of the architect responsible therefor.

History: En. Sec. 2, Ch. 190, L. 1953; amd. Sec. 1, Ch. 68, L. 1957; amd. Sec. 1, Ch. 167, L. 1961; amd. Sec. 1, Ch. 220, L. 1965; amd. Sec. 1, Ch. 131, L. 1967; amd. Sec. 7, Ch. 544, L. 1977; R.C.M. 1947, 66-114(part).

Cross-References

Seal of architect, 37-65-308.

18-2-115. Repealed. Sec. 12, Ch. 388, L. 1979.

History: En. Sec. 2, Ch. 190, L. 1953; amd. Sec. 1, Ch. 68, L. 1957; amd. Sec. 1, Ch. 167, L. 1961; amd. Sec. 1, Ch. 220, L. 1965; amd. Sec. 1, Ch. 131, L. 1967; amd. Sec. 7, Ch. 544, L. 1977; R.C.M. 1947, 66-114(part).

18-2-116 through 18-2-120 reserved.

18-2-121. Engineer or land surveyor to supervise project. This state and its political subdivisions such as counties, cities, towns, townships, boroughs, or other political entities or legally constituted boards, commissions, or authorities or officials or employees thereof shall not engage in the practice of engineering or land surveying involving either public or private property without the project being under the direct charge and supervision of a professional engineer for engineering projects or land surveyor for all land surveying projects, as provided for the practice of the respective professions by Title 37.

History: En. 66-2363 by Sec. 11, Ch. 366, L. 1975; R.C.M. 1947, 66-2363(part).

Cross-References

Licensing engineers and land surveyors, Title 37, ch. 67, part 3.

18-2-122. Plans to bear seal. This state and its political subdivisions such as counties, cities, towns, townships, boroughs, or other political entities or legally constituted boards, commissions, or authorities or officials or employees thereof may not accept plans and specifications for public buildings, water systems and storage facilities, sewerage systems, wastewater disposal projects, swimming pools, recreational facilities, and similar type projects which may have a direct bearing on the public health and safety for approval unless they bear the seal of the professional engineer for engineering projects or the professional land surveyor for land surveying projects or licensed architect for architectural projects, as provided for the practice of the respective professions by Title 37.

History: En. 66-2363 by Sec. 11, Ch. 366, L. 1975; R.C.M. 1947, 66-2363(part); amd. Sec. 24, Ch. 83, L. 1989.

Cross-References

Seal of architect, 37-65-308.

Issuance of certificates — seal of engineer or land surveyor — enrollment card for trainees, 37-67-314.

Penalty for failure to require seal, 37-67-332.

18-2-123. Payment of contractors and subcontractors. Notwithstanding any other provision of this title, payment of a construction contractor or subcontractor, as those terms are defined in 28-2-2101, for services performed by a construction contractor or subcontractor is governed by the provisions of Title 28, chapter 2, part 21.

History: En. Sec. 1, Ch. 470, L. 1999.

Part 2

Performance, Labor, and Materials Bonds

Part Cross-References

Bond of contractor in rural improvement district, 7-12-2138.

County road improvement district contracts — bonds, 7-14-2717.

Bids and contractor's bonds, 17-5-603, 17-5-613.

Highways — bidder's security — contractor's bond, 60-2-113.

18-2-201. Security requirements. (1) Except as otherwise provided in 85-1-219 and subsections (3) through (5) of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or public body contracts with a person or corporation to do work for the state, county, or municipality or other public body, city, town, or district, the board, council, commission, trustees, or body shall require the corporation, person, or persons with whom the contract is made to make, execute, and deliver to the board, council, commission, trustees, or body a good and sufficient bond with a licensed surety company as surety, conditioned that the corporation, person, or persons shall:

(a) faithfully perform all of the provisions of the contract;

(b) pay all laborers, mechanics, subcontractors, and material suppliers; and

(c) pay all persons who supply the corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for performing the work.

(2) Notwithstanding the provisions of subsection (1), the state or other governmental entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency of the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and subcontractors:

(a) lawful money of the United States; or

(b) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, or bank draft, drawn or issued by:

(i) any federally or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation; or

(ii) a credit union insured by the national credit union share insurance fund.

(3) Notwithstanding the provisions of subsection (1), any board, council, commission, trustee, or body acting for any county, municipality, or any public body other than the state may, in lieu of a bond from a licensed surety company, accept good and sufficient bond with two or more sureties acceptable to the governmental body.

(4) Except as provided in subsection (5), the state or other governmental entity may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than $50,000.

(5) A school district may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than $7,500.

History: En. Sec. 1, Ch. 20, L. 1931; re-en. Sec. 5668.41, R.C.M. 1935; R.C.M. 1947, 6-401(part); amd. Sec. 1, Ch. 602, L. 1981; amd. Sec. 1, Ch. 147, L. 1985; amd. Sec. 2, Ch. 498, L. 1985; amd. Sec. 1, Ch. 250, L.

1987; amd. Sec. 59, Ch. 370, L. 1987; amd. Sec. 1, Ch. 236, L. 1993; amd. Sec. 1, Ch. 130, L. 1995; amd. Sec. 4, Ch. 249, L. 1997; amd. Sec. 1, Ch. 112, L. 1999; amd. Sec. 3, Ch. 303, L. 1999.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

18-2-202. Failure to require security — waiver. If any board, council, commission, trustee, or body acting for the state or any board of county commissioners or any mayor and common council of any incorporated city or town or tribunal transacting the business of any such municipal corporation waives or fails to take the security required or authorized by 18-2-201, the state or the county, incorporated city or town, or other municipal corporation is liable to the persons mentioned in 18-2-201 to the full extent and for the full amount of all of the contracted debts by any subcontractor as well as the contractor.

History: En. Sec. 3, Ch. 20, L. 1931; re-en. Sec. 5668.43, R.C.M. 1935; R.C.M. 1947, 6-403; amd. Sec. 2, Ch. 602, L. 1981; amd. Sec. 2, Ch. 250, L. 1987; amd. Sec. 2, Ch. 130, L. 1995.

Cross-References

Liens, Title 71, ch. 3.

18-2-203. Amount and terms of security. The security mentioned in 18-2-201 must be in an amount equal to the full contract price agreed to be paid for the work or improvement and must be to the state of Montana, except in cases of cities and towns, in which case the municipality may by general ordinance fix and determine the amount of the security and the name of the secured party, provided that the amount may not be for less than 25% of the contract price of the improvement, and the security may designate that the amount is payable to the city or town and not to the state of Montana.

History: En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; R.C.M. 1947, 6-404(part); amd. Sec. 3, Ch. 130, L. 1995.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

18-2-204. Right of action on security — notice. (1) All persons mentioned in 18-2-201 have a right of action in their own name or names on any security furnished under the terms of this part for work done by the laborers or mechanics and for provender, materials, supplies, provisions, or goods supplied and furnished in the work or the making of the improvements. The persons do not have any right of action on the security unless within 90 days after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county, or municipality or other public body, city, town, or district, the laborer, mechanic or subcontractor, or materialman or person claiming to have supplied provender, materials, provisions, or goods for the prosecution of the work or the making of the improvement presents to and files with the board, council, commission, trustees, or body acting for the state, county, or municipality or other public body, city, town, or district a notice in writing in substance as follows:

"TO (here insert the name of the state, county, or municipality or other public body, city, town, or district):

NOTICE IS HEREBY GIVEN that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or materialman or person claiming to have furnished labor, materials, or provisions for the contract or work) has a claim in the sum of .... dollars (here insert the amount) against the security taken from .... (here insert the name of the principal and name of the person providing the security) for the work of .... (here insert a brief mention or description of the work concerning which the security was taken). (Here to be signed) ...."

(2) The notice must be signed by the person or corporation making the claim or giving the notice. After being presented and filed, the notice is a public record open to inspection by any person.

History: En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; R.C.M. 1947, 6-404(part); amd. Sec. 4, Ch. 130, L. 1995.

Cross-References

Public records generally, Title 2, ch. 6, part 1.
Suretyship, Title 28, ch. 11, part 4.
Liens, Title 71, ch. 3.

18-2-205. Effect of dealing with subcontractor. A corporation or person performing services or furnishing provender, provisions, supplies, or material to a subcontractor has the same right under the provisions of the security as if the work, services, provender, provisions, supplies, or material was furnished to the original contractor.

History: En. Sec. 1, Ch. 20, L. 1931; re-en. Sec. 5668.41, R.C.M. 1935; R.C.M. 1947, 6-401(part); amd. Sec. 5, Ch. 130, L. 1995.

Cross-References

Liens, Title 71, ch. 3.

18-2-206. Notice to contractor concerning subcontractor. (1) A person, firm, or corporation furnishing provender, provisions, materials, or supplies to be used in the construction, performance, carrying on, prosecution, or doing of any work for the state or any county, city, town, district, municipality, or other public body shall, not later than 30 days after the date of the first delivery to a subcontractor or agent of a person, firm, or corporation having a subcontract for the construction, performance, carrying on, prosecution, or doing of the work, give a notice of a right of action on the security.

(2) (a) The notice must be delivered personally or sent by certified mail to the contractor.

(b) The notice must be in writing and state:

(i) that it is a notice of a right of action on the security;

(ii) that the person, firm, or corporation giving the notice has commenced to deliver provender, provisions, materials, or supplies;

(iii) the name of the subcontractor or agent who placed the order or to whom the provender, provisions, materials, or supplies were delivered; and

(iv) that the contractor and the contractor's security will be held for the unpaid price if the supplier is not paid.

(3) To have a right of action against the contractor and the security under this part, a person, firm, or corporation shall give the written notice required by this section in substantially the form described in subsection (2). Any other type of actual or constructive notice is not sufficient.

(4) A suit or action may not be maintained in any court against the contractor or the security to recover for the provender, provisions, materials, or supplies or any part thereof unless the provisions of this part have been complied with.

History: En. Sec. 2, Ch. 20, L. 1931; re-en. Sec. 5668.42, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1967; R.C.M. 1947, 6-402; amd. Sec. 1, Ch. 637, L. 1987; amd. Sec. 6, Ch. 130, L. 1995.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Liens, Title 71, ch. 3.

18-2-207. Costs — attorney fees. In a suit or action brought against the surety, payor, or other person liable on the security by a person or corporation to recover for any of the items specified in this part, the prevailing party is entitled to recover, in addition to all other costs, attorney fees in a sum that the court finds reasonable. However, attorney fees may not be allowed in a suit or action brought or instituted before the expiration of 30 days following the date of filing of the notice required in 18-2-206.

History: En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; R.C.M. 1947, 6-404(part); amd. Sec. 7, Ch. 130, L. 1995.

Cross-References

Costs and attorney fees, Title 25, ch. 10, parts 1 through 3.

Suretyship, Title 28, ch. 11, part 4.

18-2-208. Exceptions. (1) The provisions of this part do not apply to money loaned or advanced to a contractor, subcontractor, or other person in the performance of the work.

(2) A city or town may impose any other or further conditions and obligations in the security that is considered necessary for its proper protection in the fulfillment of the terms of the contract and not in conflict with this part.

(3) The notice required by 18-2-204 to be given within 90 days after completion of the contract and acceptance of the work may not be construed to prevent or delay the payment of money due the contractor under the terms and conditions specified in the contract.

History: (1)En. Sec. 1, Ch. 20, L. 1931; re-en. Sec. 5668.41, R.C.M. 1935; Sec. 6-401, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; Sec. 6-404, R.C.M. 1947; R.C.M. 1947, 6-401(part), 6-404(part); amd. Sec. 8, Ch. 130, L. 1995.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Part 3

Contract Requirements and Restrictions

Part Cross-References

Illegal interest in contracts, 45-7-401.

18-2-301. Bids required — advertising. (1) It is unlawful for any offices, departments, institutions, or any agent of the state of Montana acting for or in behalf of the state to do, to cause to be done, or to let any contract for the construction of buildings or the alteration and improvement of buildings and adjacent grounds on behalf of and for the benefit of the state when the amount involved is $75,000 or more without first advertising in at least one issue each week for 3 consecutive weeks in two newspapers published in the state, one of which must be published at the seat of government and the other in the county where the work is to be performed, calling for sealed bids to perform the work and stating the time and place bids will be considered.

(2) All work may be done, caused to be done, or contracted for only after competitive bidding.

(3) If responsible bids are not received after two attempts, the department or agency may contract for the work in a manner determined to be cost-effective for the state.

(4) This section does not apply to work done by inmates at an institution in the department of corrections.

(5) (a) The provisions of Montana law governing advertising and competitive bidding do not apply when the department of fish, wildlife, and parks is preserving or restoring the historic buildings and resources that it owns at Bannack if:

(i) the options listed in subsection (5)(b) are determined to be more cost-effective for the state; and

(ii) the implementation of the options listed in subsection (5)(b) is necessary to save historic buildings and resources from degradation and loss.

(b) For the preservation or restoration of historic buildings and resources at Bannack when the conditions listed in subsection (5)(a) are met, the department of fish, wildlife, and parks may accomplish the preservation or restoration through:

(i) a memorandum of understanding with a local, state, or federal entity or nonprofit organization when the entity or organization demonstrates the competence, knowledge, and qualifications to preserve or restore historic resources;

(ii) the use of qualified and trained department of fish, wildlife, and parks employees and volunteers;

(iii) a training program in historic preservation and restoration conducted by a qualified local, state, or federal entity or a qualified nonprofit organization; or

(iv) any combination of the options described in subsection (5)(b).

History: (1) thru (3)En. Sec. 1, Ch. 149, L. 1927; re-en. Sec. 259.1, R.C.M. 1935; amd. Sec. 1, Ch. 142, L. 1961; amd. Sec. 1, Ch. 97, L. 1977; Sec. 82-1131, R.C.M. 1947; (4)En. Sec. 2, Ch. 142, L. 1961; amd. Sec. 92, Ch. 199, L. 1965; amd. Sec. 54, Ch. 326, L. 1974; Sec. 82-1131.1, R.C.M. 1947; R.C.M. 1947, 82-1131, 82-1131.1; amd. Sec. 2, Ch. 16, L. 1979; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 6, Ch. 518, L. 1993; amd. Sec. 61, Ch. 546, L. 1995; amd. Sec. 1, Ch. 57, L. 1997; amd. Sec. 5, Ch. 249, L. 1997.

Cross-References

Supervision of construction of buildings, 18-2-103.

18-2-302. Bid security — waiver — authority to submit. (1) Except as provided in subsection (2), each bid must be accompanied by bid security in the amount of 10% of the bid.

The security may consist of cash, a cashier's check, a certified check, a bank money order, a certificate of deposit, a money market certificate, or a bank draft. The security must be:

(a) drawn and issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation;

(b) drawn and issued by a credit union insured by the national credit union share insurance fund; or

(c) a bid bond or bonds executed by a surety company authorized to do business in the state of Montana.

(2) The state or other governmental entity may waive the requirements for bid security on building or construction projects, as defined in 18-2-101, that cost less than $25,000.

(3) The bid security must be signed by an individual authorized to submit the security by the corporation or other business entity on whose behalf the security is submitted. If the request for bid or other specifications provided by the state or other governmental entity specify the form or content of the bid security, the security submitted must comply with the requirements of that specification.

History: En. Sec. 3, Ch. 149, L. 1927; re-en. Sec. 259.3, R.C.M. 1935; amd. Sec. 2, Ch. 193, L. 1977; amd. Sec. 1, Ch. 487, L. 1977; R.C.M. 1947, 82-1133; amd. Sec. 3, Ch. 250, L. 1987; amd. Sec. 9, Ch. 130, L. 1995; amd. Sec. 6, Ch. 249, L. 1997; amd. Sec. 1, Ch. 282, L. 1999.

Cross-References

Advertisement for bid to specify required security, 18-1-202.
Form of security, 18-1-203.
Forfeiture — bidder's liability, 18-1-204.
Suretyship, Title 28, ch. 11, part 4.
Acceptance and issuance of drafts and letters of credit, 32-1-437.
Certified checks, 32-1-441.

18-2-303. Construction bids — minimum requirements — effect of failure to comply. (1) Each bid communicated to a state agency for the construction of a building must contain or be accompanied by the following items that may not be waived by the state agency:

(a) bid security, as required by 18-2-302;

(b) the unit price for each item required to be bid by unit price; and

(c) the signature of an individual authorized to submit the bid and authorized by that submission to agree to perform the contract if the bid is accepted. If the request for bid or other specifications provided by the state agency specify the individual required to submit the bid, the bid must comply with that requirement.

(2) The unit price must be expressly stated in the bid and may not have to be calculated by the state agency by dividing the total of the unit prices by the number of units specified or required.

(3) A bid that does not include the items required by subsection (1) as part of or along with the bid may not be accepted by the state agency.

(4) The following definitions apply to this section:

(a) "Building" has the meaning provided in 18-2-101.

(b) "Construction" has the meaning provided in 18-2-101.

(c) "State agency" means a department, board, commission, authority, or office of a branch of state government, including the board of regents and the Montana university system.

(d) "Unit price" means the price of lumber, concrete, earth, pipe, or other construction item, activity, or material for which the price is required by the request for bids to be bid on the basis of that item, a linear foot, square foot, square yard, cubic yard, activity an hour or other measurement of time, or other standard unit of measurement for that material, item, or activity.

History: En. Sec. 2, Ch. 282, L. 1999.

18-2-304 and 18-2-305 reserved.

18-2-306. Time of final acceptance and final payment on construction contracts — interest. (1) A government entity that enters into a contract for the construction of a building shall, unless otherwise provided by law or the contract and within 10 days after a request by the construction contractor for final acceptance, decide whether or not to make final acceptance. Within 30 days after final acceptance by the government entity, the government entity shall make the final payment of the contract price specified in the contract to the other party to the contract.

(2) Except as provided by law or the contract, a government entity that fails to complete the payment of the contract price at the time required by subsection (1) shall pay to the other party to the contract interest at the rate specified in 17-8-242 or 18-1-404, as applicable. Collection of interest pursuant to this section does not preclude any other legal remedy.

(3) The following definitions apply to this section:

(a) "Building" has the meaning provided in 18-2-101.

(b) "Construction" has the meaning provided in 18-2-101.

(c) "Final acceptance" means the government entity's acceptance of the construction of a building by the contractor upon certification by the architect, project engineer, or other representative of the government entity of final completion of the building.

(d) "Final completion" means that the building has been completed in accordance with the terms and conditions of the contract documents.

(e) "Government entity" means a department, agency, commission, board, authority, institution, or office of the state, including the board of regents and the Montana university system, a municipality, county, consolidated municipal-county government, school district, or other special district.

History: En. Sec. 1, Ch. 439, L. 1999; amd. Sec. 13, Ch. 181, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 181 in (2) near end of first sentence before "18-1-104" inserted "17-8-242 or" and at end inserted "as applicable"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

18-2-307 through 18-2-310 reserved.

18-2-311. Repealed. Sec. 3, Ch. 87, L. 1985.

History: En. Sec. 1, Ch. 141, L. 1967; R.C.M. 1947, 82-1927.

18-2-312. Excusable delays. A public contractor shall not be considered to be working beyond contract time if the delay is caused by an accident or casualty produced by physical cause which is not preventable by human foresight, i.e., any of the misadventures termed an "act of God".

History: En. Sec. 2, Ch. 141, L. 1967; R.C.M. 1947, 82-1928.

Cross-References

When delay or failure to perform or offer to perform excused, 28-1-1301.

18-2-313. Contract provisions necessary for federal funds. In all contracts let for state, county, municipal, and school construction, repair, or maintenance work under any of the laws of this state when the funds for the projects are supplied in whole or in part from funds of the United States government, it is lawful to insert in each of the contracts any provisions that are or will be necessary to have such contract conform to any federal statutes or regulation under which such funds are supplied.

History: En. Sec. 1, Ch. 43, Ex. L. 1933; re-en. Sec. 269.1, R.C.M. 1935; amd. Sec. 2, Ch. 97, L. 1977; R.C.M. 1947, 82-1147.

Cross-References

Federal revenue and endowments, Title 17, ch. 3.
Authority to construct buildings, 18-2-102.
General powers and duties of Department of Administration, 18-2-105.
Preference of Montana labor in public works — wages — federal exception, 18-2-403.

18-2-314. Cost-plus system invalid. Any contracts made by, on behalf of, or for the state of Montana which shall directly or indirectly recognize the cost-plus system or principle shall be void and of no effect and this section shall stand as a notice of the invalidity of any such contract.

History: En. Sec. 5, Ch. 149, L. 1927; re-en. Sec. 259.5, R.C.M. 1935; R.C.M. 1947, 82-1135.

Cross-References

When contract wholly void, 28-2-603.
When contract partially void, 28-2-604.
What conditions void, 28-2-707.

18-2-315. State purchasing not affected. Nothing contained in 18-2-301, 18-2-302, or 18-2-314 alters, modifies, or changes the laws providing for or relating to department of administration functions relating to state purchasing.

History: En. Sec. 6, Ch. 149, L. 1927; re-en. Sec. 259.6, R.C.M. 1935; amd. Sec. 55, Ch. 326, L. 1974; R.C.M. 1947, 82-1136.

Cross-References

Procurement generally, Title 18, ch. 4.
Special purchasing conditions, Title 18, ch. 5.

18-2-316. Limit on retainage for public contracts. (1) The maximum retainage applied to construction contracts administered by the state of Montana or any department, agency, or political subdivision of the state of Montana, by any county, municipality, or political subdivision of a county or municipality, or by a school district may not exceed 5% if the contractor is performing by the terms of the contract.

(2) The retainage percentage withheld by a government entity, as provided for in subsection (1), from a contractor is the maximum retainage percentage that a contractor may withhold from a subcontractor.

(3) For the purposes for this section, “retainage” means the ratio, in percent, of funds retained to the total amount to be paid to the contractor by the government entity.

History: En. Sec. 2, Ch. 222, L. 1999.

Part 4
Special Conditions — Labor

Part Cross-References

Wage protection for employees of mineral and oil industry, 39-3-501.
Hours of labor for employees on state-aided projects, 39-4-107.
Freedom from discrimination in public contracts, 49-3-207.
Letting of contracts on state and federal-aid highways, 60-2-111.

18-2-401. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) A “bona fide resident of Montana” is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person’s past habitation in this state has been coupled with an intention to make it the person’s home. Persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) “Commissioner” means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) “Construction services” means work performed by an individual in construction, heavy construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a public works contract; or

(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) “Contractor” means any general contractor, subcontractor, firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in construction services.

(5) “Department” means the department of labor and industry provided for in 2-15-1701.

(6) “District” means a prevailing wage rate district established as provided in 18-2-411.

(7) “Employer” means any firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in nonconstruction services.

(8) “Heavy and highway construction wage rates” means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by

the United States department of labor and zone pay and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public.

(9) "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

(a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;

(b) custodial or security services for publicly owned buildings and facilities;

(c) grounds maintenance for publicly owned property;

(d) the operation of public drinking water supply, waste collection, and waste disposal systems;

(e) law enforcement, including janitors and prison guards;

(f) fire protection;

(g) public or school transportation driving;

(h) nursing, nurse's aid services, and medical laboratory technician services;

(i) material and mail handling;

(j) food service and cooking;

(k) motor vehicle and construction equipment repair and servicing; and

(l) appliance and office machine repair and servicing.

(10) "Project location" means the construction site where a public works project involving construction services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and specifications.

(11) (a) "Public works contract" means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of $25,000. The nonconstruction services classification does not apply to any school district that at any time prior to April 27, 1999, contracted with a private contractor for the provision of nonconstruction services on behalf of the district.

(b) The term does not include contracts entered into by the department of public health and human services for the provision of human services.

(12) "Special circumstances" means all work performed at a facility that is built or developed for a specific Montana public works project and that is located in a prevailing wage district that contains the project location or that is located in a contiguous prevailing wage district.

(13) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed by the department based on work performed by Montana contractors who are registered under Title 39, chapter 9, and whose work is performed according to commercial building codes. The contractor survey must include information pertaining to the number of skilled craftspersons employed in the employer's peak month of employment and the wages and benefits paid for each craft. In setting the prevailing wages from the survey for each craft, the department shall use the weighted average wage for each craft, except in those cases in which the survey shows that 50% of the craftspersons are receiving the same wage. When the survey shows that 50% of the craftspersons are receiving the same wage, that wage is the prevailing wage for that craft. The work performed must be work of a similar character to the work performed in the district unless the annual survey of construction contractors and the biennial survey of nonconstruction service employers in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by the survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

(14) "Work of a similar character" means work on private commercial projects as well as work on public projects.

History: (1), (4)En. Sec. 2, Ch. 102, L. 1931; re-en. Sec. 3043.2, R.C.M. 1935; Sec. 41-702, R.C.M. 1947; (2), (3)En. Sec. 1, Ch. 139, L. 1981; (5)En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; Sec. 41-701, R.C.M. 1947; R.C.M. 1947, 41-701(part), 41-702; amd. Sec. 1, Ch. 139, L. 1981; amd. Sec. 2, Ch. 561, L. 1987; amd. Sec. 2, Ch. 609, L. 1993; amd. Sec. 1, Ch. 522, L. 1997; amd. Sec. 1, Ch. 30, L. 1999; amd. Sec. 1, Ch. 289, L. 1999; amd. Sec. 1, Ch. 496, L. 1999; amd. Sec. 1, Ch. 517, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 517 in definition of bona fide resident of Montana at beginning of second sentence deleted "Sojourners or"; inserted definitions of contractor and employer; in definition of standard prevailing rate of wages in (a)(ii) at end of first complete sentence after "computed" substituted "by the department based on work performed by Montana contractors who are registered under Title 39, chapter 9, and whose work is performed according to commercial building codes" for "from a weighted average wage rate based on all of the hours worked on work", inserted second through fourth full sentences regarding survey information and setting prevailing wages for each craft, and near middle of fifth full sentence after "unless the" substituted "annual survey of construction contractors and the biennial survey of nonconstruction service employers" for "survey of employers"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 4, Ch. 517, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to public works contracts entered into on or after [the effective date of this act]."

18-2-402. Standard prevailing rate of wages. (1) The Montana commissioner of labor may determine the standard prevailing rate of wages applicable to public works contracts under this part. The commissioner shall undertake to keep and maintain copies of collective bargaining agreements and other information on which the rates are based.

(2) The provisions of this part do not apply in those instances where the standard prevailing rate of wages is determined pursuant to federal law.

(3) In no instances where this part is applicable shall the standard prevailing rate of wage be determined to be greater than the applicable rate of wage in the area for the particular work in question as negotiated under existing and current collective bargaining agreements.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(1), (4), (5); amd. Sec. 3, Ch. 561, L. 1987.

Cross-References

Labor — wages and wage protection, Title 39, ch. 3.

18-2-403. Preference of Montana labor in public works — wages — tax-exempt project — federal exception. (1) In every public works contract, there must be inserted in the bid specification and the public works contract a provision requiring the contractor to give preference to the employment of bona fide residents of Montana in the performance of the work.

(2) All public works contracts for construction services under subsection (1), except those for heavy and highway construction, that are conducted at the project location or under special circumstances must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that:

(i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and

(ii) is in effect and applicable to the district in which the work is being performed.

(3) In every public works contract for heavy and highway construction, there must be inserted a provision to require the contractor to pay the heavy and highway construction wage rates established statewide for heavy and highway construction services conducted at the project location or under special circumstances.

(4) All public works contracts for nonconstruction services under subsection (1) must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that:

(i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and

(ii) is in effect and applicable to the district in which the work is being performed.

(5) Transportation of goods, supplies, materials, and manufactured or fabricated items to or from the project location is not subject to payment of the standard prevailing rate of wages.

(6) A contract, other than a public works contract, let for a project costing more than $25,000 and financed from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, on or after July 1, 1993, must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(7) A public works contract may not be let to any person, firm, association, or corporation refusing to execute an agreement with the provisions described in subsections (1) through (6) in it, provided that in public works contracts involving the expenditure of federal-aid funds, this part may not be enforced in a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

(8) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from the contractor's obligation to pay the standard prevailing wage rate and places the obligation on the public contracting agency.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(part); amd. Sec. 2, Ch. 58, L. 1979; amd. Sec. 2, Ch. 139, L. 1981; amd. Sec. 4, Ch. 561, L. 1987; (4)En. Sec. 1, Ch. 420, L. 1991; amd. Sec. 3, Ch. 464, L. 1993; amd. Sec. 3, Ch. 609, L. 1993; amd. Sec. 2, Ch. 522, L. 1997; amd. Sec. 2, Ch. 289, L. 1999.

Cross-References

State contracts to lowest resident bidder, 18-1-102.
Impartiality to be shown in letting contracts — preference to residents, 18-1-111.
Authority to construct buildings, 18-2-102.
General powers and duties of Department of Administration, 18-2-105.
Contract provisions necessary for federal funds, 18-2-313.
Method for payment of standard prevailing wage, 18-2-412.
Veterans' public employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.
Nondiscrimination provision in all public contracts, 49-3-207.

18-2-404. Approval of public works contract — bond. (1) All public works contracts under this part must be approved in writing by the legal adviser of the contracting county, municipal corporation, school district, assessment district, or special improvement district body or officer prior to execution by the contracting public officer or officers.

(2) In all public works contracts entered into under the provisions of this part, at least $1,000 of the contract price must be withheld at all times until the termination of the public works contract.

History: (1)En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; Sec. 41-701, R.C.M. 1947; (2)En. Sec. 3, Ch. 102, L. 1931; re-en. Sec. 3043.3, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1961; Sec. 41-703, R.C.M. 1947; R.C.M. 1947, 41-701(part), 41-703(part); amd. Sec. 3, Ch. 522, L. 1997.

Cross-References

Bonding requirements, 18-2-201.
Executed versus executory contracts, 28-2-104.
What contracts must be in writing, 28-2-903.

18-2-405. Repealed. Sec. 8, Ch. 609, L. 1993.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(part).

18-2-406. Posting wage scale and fringe benefits. The contractor performing work or providing construction services under public works contracts, as provided in this part, shall post in a prominent and accessible site on the project or staging area, not later than the first day of work and continuing for the entire duration of the project, a legible statement of all wages and fringe benefits to be paid to the employees.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(2); amd. Sec. 2, Ch. 517, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 517 at beginning substituted "The contractor performing" for "Contractors, subcontractors, and employers who are performing", after "providing" inserted "construction", near middle after "project or" substituted "staging area" for "work area", after "first day of work" inserted "and continuing for the entire duration of the project", after "all wages" inserted "and fringe benefits", and at end after "employees" deleted "employed on such site or work area"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 4, Ch. 517, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to public works contracts entered into on or after [the effective date of this act]."

Cross-References

Wages and wage protection, Title 39, ch. 3.

18-2-407. Forfeiture for failure to pay standard prevailing wage. (1) Any contractor, subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit to the department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected by the department under this section must be deposited in the general fund. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus $25 a day for each day that the employee was underpaid.

(2) Whenever it appears to the contracting agency or to the Montana commissioner of labor and industry that there is insufficient money due to the contractor or the employer under the terms of the contract to cover penalties, the Montana commissioner of labor and industry may, within 90 days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all penalties and forfeitures due. This part does not prevent the individual worker who has been underpaid or the commissioner of labor and industry on behalf of all the underpaid workers from maintaining an action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2, except that appeal of the hearings officer's decision is made directly to district court rather than to the board of personnel appeals.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L.

1975; R.C.M. 1947, 41-701(3); amd. Sec. 5, Ch. 554, L. 1989; amd. Sec. 4, Ch. 609, L. 1993; amd. Sec. 4, Ch. 90, L. 1995; amd. Sec. 13, Ch. 389, L. 1999.

Cross-References

Payment of wages, Title 39, ch. 3, part 2.

18-2-408. Renumbered 18-2-432 by Code Commissioner, 1985.

18-2-409. Montana residents to be employed on state construction contracts. (1) On any state construction project funded by state or federal funds, except a project partially funded with federal aid money from the United States department of transportation or where residency preference laws are specifically prohibited by federal law and to which the state is a signatory to the construction contract, at least 50% of the work must be performed by bona fide Montana residents, as defined in 18-2-401.

(2) For any contract awarded for a state construction project, except a project partially funded with federal aid money from the United States department of transportation or where residency preference laws are specifically prohibited by federal law, there must be inserted in the bid specification and the contract a provision, in language approved by the commissioner of labor and industry, implementing the requirements of subsection (1). The bid specification and the contract must provide that at least 50% of the workers on the project will be bona fide Montana residents. If there are two or more contracts and due to a lack of qualified personnel a contractor cannot guarantee that at least 50% of his workers will be Montana residents, his contract must provide that the percentage the commissioner of labor and industry believes possible will be Montana residents and one or more of the other contracts must provide for a higher percentage of Montana residents so that 50% of the workers on the project will be Montana residents.

(3) The commissioner of labor and industry shall enforce this section and investigate complaints of its violation and may adopt rules to implement this section.

History: En. Sec. 1, Ch. 549, L. 1985.

18-2-410 reserved.

18-2-411. Creation of prevailing wage rate districts. (1) Without taking into consideration heavy and highway construction wage rates, the commissioner shall divide the state into at least 10 prevailing wage rate districts.

(2) In initially determining the districts, the commissioner must:

(a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and

(b) publish the reasons supporting the creation of each district.

(3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.

(4) The presence of collective bargaining agreements in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.

(5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and 18-2-402.

History: En. Sec. 1, Ch. 561, L. 1987; amd. Sec. 5, Ch. 609, L. 1993.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

18-2-412. Method for payment of standard prevailing wage. (1) To fulfill the obligation to pay the standard prevailing rate of wages under 18-2-403, a contractor or subcontractor may:

(a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;

(b) make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund, plan, or program that meets the requirements of the Employee Retirement Income Security Act of 1974 or that is a bona fide program approved by the United States department of labor; or

(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions that meet the requirements of the Employee Retirement Income Security Act of 1974, travel, or other bona fide programs approved by the United States department of labor, that is applicable to the district for the particular type of work being performed.

(2) The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to workers or employees for health care, pensions on retirement or death, life insurance, disability and sickness insurance, or bona fide programs that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are approved by the United States department of labor.

(3) A private contractor or subcontractor shall file a copy of the fringe benefit fund, plan, or program described in subsection (2) with the department.

History: En. Sec. 1, Ch. 609, L. 1993.

18-2-413 through 18-2-420 reserved.

18-2-421. Notice. When a public works project is accepted by the public contracting agency, a notice of acceptance and the completion date of the project must be sent to the department. However, in the case of public works contracts that amount to $50,000 or less in cost, the notice of acceptance and the completion date of the project is not required unless the department requests that information. The 90-day limitation for filing an action in district court, as provided in 18-2-407, does not begin until the public contracting agency notifies the department of its acceptance of the public works project.

History: En. Sec. 3, Ch. 139, L. 1981; amd. Sec. 4, Ch. 522, L. 1997.

18-2-422. Bid specification and public works contract to contain standard prevailing wage rate and payroll record notification. All public works contracts and the bid specifications for those contracts must contain:

(1) a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, that the contractors and employers shall pay during construction of the project;

(2) a provision requiring each contractor and employer to maintain payroll records in a manner readily capable of being certified for submission under 18-2-423, for not less than 3 years after the contractor's or employer's completion of work on the project; and

(3) a provision requiring each contractor to post a statement of all wages and fringe benefits in compliance with 18-2-423.

History: En. Sec. 4, Ch. 139, L. 1981; amd. Sec. 5, Ch. 522, L. 1997; amd. Sec. 3, Ch. 517, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 517 in (1) after "contractors and" substituted "employers" for "subcontractors"; inserted (2) requiring that contracts contain a provision requiring each contractor and employer to maintain payroll records; inserted (3) requiring that contracts contain a provision requiring each contractor to post a statement of all wages and fringe benefits; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 4, Ch. 517, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to public works contracts entered into on or after [the effective date of this act]."

18-2-423. Submission of payroll records. If a complaint is filed with the department alleging noncompliance with 18-2-422, the department may require the project to submit to it certified copies of the payroll records for workers employed on that project. A contractor or a subcontractor shall pay employees receiving an hourly wage on a weekly basis. If a wage violation complaint is filed with the department, the contractor or subcontractor shall provide the employee's payroll records to the department within 5 days of receiving the payroll request from the department.

History: En. Sec. 5, Ch. 139, L. 1981; amd. Sec. 6, Ch. 609, L. 1993.

18-2-424. Enforcement. If a contractor or a subcontractor refuses to submit payroll records requested by the department pursuant to 18-2-423, the commissioner or his authorized representative may issue subpoenas compelling the production of those records.

History: En. Sec. 6, Ch. 139, L. 1981.

18-2-425. Prohibition — project labor agreement. (1) Except as otherwise provided in this chapter, the state or any political subdivision that contracts for the construction, maintenance, repair, or improvement of public works may not require that a contractor, subcontractor, or material supplier or carrier engaged in the construction, maintenance, repair, or improvement of public works execute or otherwise become a party to any project labor agreement, collective bargaining agreement, prehire agreement, or other agreement with employees, their representatives, or any labor organization as a condition of bidding, negotiating, being awarded, or performing work on a public works contract.

(2) For the purposes of this section, "public works" means:

(a) a building, road, street, sewer, storm drain, water system, irrigation system, reclamation project, or other facility owned or to be contracted for by the state or a political subdivision and that is paid for in whole or in part with tax revenue paid by residents of the state; or

(b) any other construction service or nonconstruction service as defined in 18-2-401.

History: En. Sec. 1, Ch. 540, L. 1999.

18-2-426 through 18-2-430 reserved.

18-2-431. Rulemaking authority. The commissioner may adopt rules necessary to implement this part.

History: En. Sec. 1, Ch. 234, L. 1985.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

18-2-432. Penalty for violation. (1) (a) If a person, firm, or corporation fails to comply with the provisions of this part, the state, county, municipality, school district, or officer of a political subdivision that executed the public works contract shall retain $1,000 of the contract price as liquidated damages for the violation of the terms of the public works contract, and the money must be credited to the proper funds of the state, county, municipality, school district, or political subdivision.

(b) If a person, firm, or corporation fails to comply with the provisions of this part due to gross negligence, as determined by the commissioner, the commissioner may retain up to an additional $10,000 above the amount provided for in subsection (1)(a) as a penalty for the violation of the terms of the public works contract. The money retained pursuant to this subsection (1)(b) must be credited to the proper funds of the state, county, municipality, school district, or other political subdivision.

(2) Whenever a contractor or subcontractor is found by the commissioner to have aggravatedly or willfully violated the labor standards provisions of this chapter, the contractor or subcontractor or any firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest is ineligible, for a period not to exceed 3 years after the date of the final judgment, to receive any public works contracts or subcontracts that are subject to the provisions of this chapter.

(3) Whenever an action has been instituted in a district court in this state against any person, firm, or corporation for the violation of this part, the court in which the action is pending is authorized to issue an injunction to restrain the person, firm, or corporation from proceeding with a public works contract with the state, county, municipality, school district, or political subdivision, pending the final determination of the instituted action.

History: En. Sec. 3, Ch. 102, L. 1931; re-en. Sec. 3043.3, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1961; R.C.M. 1947, 41-703(part); Sec. 18-2-408, MCA 1983; redes. 18-2-432 by Code Commissioner, 1985; amd. Sec. 7, Ch. 609, L. 1993; amd. Sec. 6, Ch. 522, L. 1997; amd. Sec. 1, Ch. 78, L. 1999.

Cross-References

Damages, Title 27, ch. 1, part 2.

Injunctions, Title 27, ch. 19.

CHAPTER 3
STATE BUILDING LEASES

Part 1 — General Provisions

18-3-101. Authority to lease with option to purchase.
18-3-102. Repealed.
18-3-103. Repealed.
18-3-104. Repealed.
18-3-105. Location of building.
18-3-106. Security pledge.
18-3-107. Repealed.
18-3-108 and 18-3-109 reserved.
18-3-110. Requests for proposals.
18-3-111. Exemption from construction contract requirements.

Chapter Cross-References

Illegal interest in contracts, 45-7-401.
Statewide building construction standards, Title 50, ch. 60.

Part 1
General Provisions

Part Cross-References

State debt — limitations, Art. VIII, sec. 8, Mont. Const.

18-3-101. Authority to lease with option to purchase. When authorized by a vote of two-thirds of the members of each house of the legislature, the department of administration may, as part of the long-range building program, enter into a lease contract that provides an option to purchase a building to be used by the state or any department of state government.

History: En. 82-3315.1 by Sec. 1, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.1; amd. Sec. 1, Ch. 455, L. 1997.

Cross-References

Long-range building program bonds, Title 17, ch. 5, part 4.
General powers and duties of Department of Administration, 18-2-105.

18-3-102. Repealed. Sec. 8, Ch. 455, L. 1997.

History: En. 82-3315.4 by Sec. 4, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.4.

18-3-103. Repealed. Sec. 8, Ch. 455, L. 1997.

History: En. 82-3315.7 by Sec. 7, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.7.

18-3-104. Repealed. Sec. 8, Ch. 455, L. 1997.

History: En. 82-3315.5 by Sec. 5, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.5.

18-3-105. Location of building. A building authorized pursuant to 18-3-101 must be located as determined by the terms of the request for proposals. If a contract entered into pursuant to this chapter requires the sale or lease of any interest in state lands, the contract must have prior approval of the board of land commissioners.

History: En. 82-3315.2 by Sec. 2, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.2; amd. Sec. 2, Ch. 455, L. 1997.

Cross-References

Board of Land Commissioners — power to sell, lease, or exchange certain state lands, 77-1-204.

18-3-106. Security pledge. To insure an adequate security provision for the lessor, the full faith and credit and taxing powers of the state of Montana are pledged in the amount necessary for the payment of rent incurred pursuant to a contract authorized by this part.

History: En. 82-3315.3 by Sec. 3, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.3.

Cross-References

Tax power inalienable, Art. VIII, sec. 2, Mont. Const.
Taxation, Title 15.

18-3-107. Repealed. Sec. 8, Ch. 455, L. 1997.

History: En. 82-3315.6 by Sec. 6, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.6.

18-3-108 and 18-3-109 reserved.

18-3-110. Requests for proposals. (1) The department, with the cooperation of the departments that will occupy the rental property, shall develop a request for proposals defining the state's program and building specification requirements. A request for proposals must be administered in accordance with 18-4-304(3) through (6).

(2) For projects valued at less than $2 million, the departments may develop the request for proposals. For projects valued at $2 million or more, the departments shall contract with a licensed architect or engineer selected in accordance with 18-2-112 for the development of the request for proposals.

(3) A successful proposer, general contractor, or subcontractor engaged in construction under this part shall pay the standard prevailing rate of wages to employees engaged in the construction of the leased property.

History: En. Sec. 3, Ch. 455, L. 1997; amd. Sec. 47, Ch. 51, L. 1999.

18-3-111. Exemption from construction contract requirements. Except as provided in 18-3-110, a contract provided for in this chapter is not subject to the provisions of Title 18, chapter 2.

History: En. Sec. 4, Ch. 455, L. 1997.

CHAPTER 4

MONTANA PROCUREMENT ACT

Part 1 — General Provisions

18-4-101. Repealed.
18-4-102. Repealed.
18-4-103. Repealed.
18-4-104. Renumbered 18-4-133 by Code Commissioner, 1983.
18-4-105. Renumbered 18-4-141 by Code Commissioner, 1983.
18-4-106 through 18-4-110 reserved.
18-4-111. Renumbered 2-17-501 by Code Commissioner, 1983.
18-4-112 through 18-4-120 reserved.
18-4-121. Short title.
18-4-122. Purpose.
18-4-123. Definitions.
18-4-124. Local government adoption of procurement provisions.
18-4-125. Collection of data concerning public procurement.
18-4-126. Public access to procurement information — records — retention.
18-4-127 through 18-4-130 reserved.
18-4-131. Repealed.
18-4-132. Application.
18-4-133. Purchases exempt from general requirements.
18-4-134 through 18-4-140 reserved.
18-4-141. Contract transfers and collusion prohibited — violations and penalty.

Part 2 — Duties of Department

18-4-201 through 18-4-214. Repealed.
18-4-215 through 18-4-220 reserved.
18-4-221. General procurement authority and duties of department — rules.
18-4-222. Delegation of authority by department.
18-4-223. State procurement rules — delegation — existing rights.
18-4-224. Contract clauses — rules.
18-4-225. Repealed.
18-4-226. Surplus supply — rules.
18-4-227 through 18-4-230 reserved.
18-4-231. Definition of specification.
18-4-232. Specifications — rules.
18-4-233. Using agencies' advice.
18-4-234. Competition.
18-4-235 through 18-4-240 reserved.
18-4-241. Authority to remove or suspend vendor.
18-4-242. Exclusive remedies for unlawful solicitation or award.

Part 3 — Procurement Procedure

18-4-301. Definitions.
18-4-302. Methods of source selection — authorization for alternative procurement methods.
18-4-303. Competitive sealed bidding.
18-4-304. Competitive sealed proposals.
18-4-305. Small purchases and limited solicitations.
18-4-306. Sole source procurement — records.
18-4-307. Cancellation of invitations for bids or requests for proposals.
18-4-308. Nonresponsibility of bidders and offerors — nondisclosure.
18-4-309. Prequalification of suppliers.
18-4-310. Types of contracts.
18-4-311. Approval of accounting system.
18-4-312. Bid and contract performance security.
18-4-313. Contracts — terms, extensions, and time limits.
18-4-314. Reporting of anticompetitive practices.

Part 4 — Cooperative Purchasing

18-4-401. Definitions.
18-4-402. Cooperative purchasing authorized.
18-4-403. Sale, acquisition, or use of supplies by a public procurement unit.
18-4-404. Cooperative use of supplies or services.
18-4-405. Joint use of facilities.
18-4-406. Information and services — fees.
18-4-407. Review of procurement requirements.

Chapter Cross-References

Officer not to be purchaser in sale, 2-2-202.

Property management, Title 2, ch. 17.

Information technology, Title 2, ch. 17, part 5.

Audit services — legislative, 5-13-411.

Purchase of rural improvement districts, 7-12-2131 through 7-12-2137.

Encumbrance of purchase orders, 17-7-303.

Failure to make timely payment — interest assessment on amounts due, 17-8-242.

State purchasing not affected, 18-2-315.

Highway Patrol equipment, 44-1-303.

Attorney General authorized to purchase equipment for teletypewriter communications system, 44-2-302, 44-2-312 through 44-2-316.

Gifts to public servants having discretionary function in contract letting, 45-7-104.

Illegal interests in contracts, 45-7-401.

Freedom from discrimination in public contracts, 49-3-207.

Prison industries — products, 53-30-131, 53-30-133.

Department of Fish, Wildlife, and Parks — waterfowl stamp artwork — exemption, 87-2-412.

Part 1
General Provisions

18-4-101. Repealed. Sec. 53, Ch. 519, L. 1983.

History: (1), (2)En. 82-1902.1 by Sec. 8, Ch. 97, L. 1977; Sec. 82-1902.1, R.C.M. 1947; (3)En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; Sec. 82-1917, R.C.M. 1947; R.C.M. 1947, 82-1902.1, 82-1917(part); amd. Sec. 1, Ch. 597, L. 1979.

18-4-102. Repealed. Sec. 53, Ch. 519, L. 1983.

History: (1), (2)En. Sec. 8, Ch. 66, L. 1923; re-en. Sec. 293.8, R.C.M. 1935; amd. Sec. 2, Ch. 301, L. 1971; amd. Sec. 1, Ch. 496, L. 1973; amd. Sec. 9, Ch. 242, L. 1974; amd. Sec. 73, Ch. 326, L. 1974; Sec. 82-1918, R.C.M. 1947; (3)En. Sec. 11, Ch. 66, L. 1923; re-en. Sec. 293.11, R.C.M. 1935; amd. Sec. 76, Ch. 326, L. 1974; Sec. 82-1921, R.C.M. 1947; R.C.M. 1947, 82-1918(1), 82-1921(part); amd. Sec. 2, Ch. 597, L. 1979.

18-4-103. Repealed. Sec. 2, Ch. 175, L. 1979.

History: En. 82-1915.1 by Sec. 70, Ch. 326, L. 1974; R.C.M. 1947, 82-1915.1.

18-4-104. Renumbered 18-4-133 by Code Commissioner, 1983.

18-4-105. Renumbered 18-4-141 by Code Commissioner, 1983.

18-4-106 through 18-4-110 reserved.

18-4-111. Renumbered 2-17-501 by Code Commissioner, 1983.

18-4-112 through 18-4-120 reserved.

18-4-121. Short title. This chapter may be cited as the "Montana Procurement Act".
History: En. Sec. 1, Ch. 519, L. 1983.

18-4-122. Purpose. The underlying purposes and policies of this chapter are to:

(1) simplify, clarify, and modernize the law governing procurement by the state of Montana;

(2) permit the continued development of procurement policies and practices;

(3) make as consistent as possible the procurement laws among the various jurisdictions;

(4) provide for increased public confidence in the procedures followed in public procurement;

(5) ensure the fair and equitable treatment of all persons who deal with the procurement system of the state;

(6) provide increased economy in state procurement activities and maximize to the fullest extent practicable the purchasing value of public funds of the state;

(7) foster effective, broad-based competition within the free enterprise system;

(8) provide safeguards for the maintenance of a procurement system of quality and integrity; and

(9) provide the exclusive remedies for unlawful bid solicitations or contract awards.
History: En. Sec. 2, Ch. 519, L. 1983; amd. Sec. 2, Ch. 443, L. 1997.

18-4-123. Definitions. In this chapter, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Business" means a corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(2) "Change order" means a written order, signed by an authorized department representative, directing the contractor to make changes that the changes clause of the contract authorizes the department to order without the consent of the contractor.

(3) "Contract" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies or services.

(4) "Contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract.

(5) "Contractor" means a person having a contract with a governmental body.

(6) "Data" means recorded information, regardless of form or characteristic.

(7) "Department" means the department of administration.

(8) "Designee" means an authorized representative of a person holding a superior position.

(9) "Director" means the director of the department of administration.

(10) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for a governmental body.

(11) "Governmental body" means a department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other entity, instrumentality, or official of the executive, legislative, or judicial branch of this state, including the board of regents and the Montana university system.

(12) (a) "Grant" means the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law.

(b) Grant does not include an award whose primary purpose is to procure an end product, whether in the form of supplies or services. A contract resulting from an award is not a grant but a procurement contract.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

(14) (a) "Printing" means the reproduction of an image from a printing surface generally made by a contact impression that causes a transfer of ink or the reproduction of an impression

by a photographic process and includes graphic arts, typesetting, binding, and other operations necessary to produce a finished printed product.

(b) Printing does not include rebinding or repair by a library or an office, department, board, or commission of books, journals, pamphlets, magazines, and literary articles held as a part of its library collection.

(15) (a) "Procurement" means acquisition with or without cost, buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. The term includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(b) Procurement does not include the acquiring of supplies or services by gift.

(16) "Procurement officer" means any person authorized to enter into and administer contracts and make written determinations with respect to contracts. The term includes an authorized representative acting within the limits of the representative's authority.

(17) "Purchasing agency" means any governmental body, other than the department, that is authorized by this chapter or its implementing rules or by way of delegation from the director to enter into contracts.

(18) (a) "Services" means the furnishing of labor, time, or effort by a contractor.

(b) Services does not include employment agreements or collective bargaining agreements, the provision of human services administered by the department of public health and human services, or services related to construction contracts.

(19) "Supplies" means all property except as otherwise provided by law, including but not limited to equipment, materials, printing, and commodities, and excluding land or any interest in land.

(20) "Using agency" means any governmental body of the state that uses any supplies or services procured under this chapter.

(21) "Vendor" means a person who offers or may offer supplies or services to a public agency.

History: **En. Sec. 3, Ch. 519, L. 1983; amd. Sec. 3, Ch. 443, L. 1997; amd. Sec. 14, Ch. 181, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 181 in definition of procurement in (a) in first sentence after "means" inserted "acquisition with or without cost" and inserted (b) providing that procurement does not include acquiring supplies or services by gift; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

18-4-124. Local government adoption of procurement provisions. A political subdivision or school district may adopt any or all parts of this chapter and the accompanying rules promulgated by the department.

History: **En. Sec. 45, Ch. 519, L. 1983.**

18-4-125. Collection of data concerning public procurement. All using agencies shall cooperate with the department in the preparation of statistical data concerning the procurement, usage, and disposition of all supplies and services, and the department may employ trained personnel as necessary to carry out this function. All using agencies shall furnish such reports as the department may require concerning usage, needs, and stocks on hand, and the department may prescribe forms to be used by the using agencies in requisitioning, ordering, and reporting of supplies and services.

History: **En. Sec. 11, Ch. 519, L. 1983.**

18-4-126. Public access to procurement information — records — retention. (1) Procurement information is a public writing and must be available to the public as provided in 2-6-102 and 18-4-304.

(2) All procurement records must be retained, managed, and disposed of in accordance with the state records management program, Title 2, chapter 6.

(3) Written determinations required by this chapter must be retained in the appropriate official contract file of the department or the purchasing agency administering the procurement in accordance with the state records management program.

History: **En. Secs. 5, 26, Ch. 519, L. 1983; amd. Sec. 4, Ch. 443, L. 1997.**

Cross-References

Right of participation, Art. II, sec. 8, Mont. Const.
Right to know, Art. II, sec. 9, Mont. Const.
Public participation in governmental operations, Title 2, ch. 3.

18-4-127 through 18-4-130 reserved.

18-4-131. Repealed. Sec. 21, Ch. 443, L. 1997.

History: En. Sec. 4, Ch. 519, L. 1983.

18-4-132. Application. (1) This chapter applies to the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body under any contract, except a contract exempted from this chapter by this section or by a statute that provides that this chapter does not apply to the contract. This chapter applies to a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to procure insurance-related services.

(6) This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(d) consulting actuaries;

(e) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(f) a private consultant employed by the Montana state lottery;

(g) a private investigator licensed by any jurisdiction; or

(h) a claims adjuster.

(7) (a) This chapter does not apply to electrical energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201.

(b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure.

History: En. Sec. 44, Ch. 519, L. 1983; amd. Sec. 1, Ch. 548, L. 1989; amd. Sec. 2, Ch. 359, L. 1995; amd. Sec. 5, Ch. 443, L. 1997; amd. Sec. 1, Ch. 407, L. 1999; amd. Sec. 1, Ch. 580, L. 1999; amd. Sec. 30, Ch. 7, L. 2001; amd. Sec. 15, Ch. 181, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 7 in (7)(a) substituted "electrical energy" for "electric energy". Amendment effective October 1, 2001.

Chapter 181 in (1) in first sentence near middle after "body" deleted "as defined in 18-4-123" and at end inserted "except a contract exempted from this chapter by this section or by a statute that provides that this chapter does not apply to the contract" and inserted second sentence referring to the procurement of certain supplies or services at no cost to the state or that are income-producing or advantageous for the state; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

Cross-References

Interest on student activity fees, 20-25-451.
State lottery, Title 23, ch. 7.

18-4-133. Purchases exempt from general requirements. (1) When immediate delivery of articles or performance of service is required by the public exigencies, the articles or service required may be procured by open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals but under the direction of the department.

(2) (a) The department may exempt the department of corrections and the department of public health and human services from the provisions of this chapter for the purchase of suitable clothing by the department of corrections and the department of public health and human services for residents of its institutions and community-based programs.

(b) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community.

(3) When none of the bids or proposals received in response to a valid solicitation are from a responsible bidder or offeror or responsive bidder or offeror, as defined in 18-4-301, the procurement officer may:

(a) cancel and reissue the solicitation. If the procurement officer reissues the solicitation, the procurement officer shall attempt to increase the number of potential vendors and may modify any specification in the original solicitation.

(b) directly negotiate with a vendor if the procurement officer determines that a second or subsequent solicitation would also be unsuccessful.

(4) The department shall adopt rules describing the conditions under which a procurement officer may negotiate directly with a vendor. The rules must reflect the purposes described in 18-4-122.

(5) When a state department, agency, or official administers a grant of public funds and contracts with a landowner to carry out a recreational or environmental remediation, reclamation, or conservation project that benefits the state, the department may exempt the landowner from the provisions of chapter 1 and this chapter if the landowner conducts the work or conducts a form of competitive procurement allowed by the terms of the contract.

History: En. Sec. 9, Ch. 66, L. 1923; re-en. Sec. 293.9, R.C.M. 1935; amd. Sec. 8, Ch. 80, L. 1961; amd. Sec. 74, Ch. 326, L. 1974; amd. Sec. 1, Ch. 230, L. 1977; R.C.M. 1947, 82-1919; amd. Sec. 1, Ch. 418, L. 1979; amd. Sec. 1, Ch. 74, L. 1981; amd. Sec. 47, Ch. 519, L. 1983; MCA 1981, 18-4-104; redes. 18-4-133 by Code Commissioner, 1983; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 62, Ch. 546, L. 1995; amd. Sec. 6, Ch. 443, L. 1997; amd. Sec. 16, Ch. 181, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 181 inserted (3) creating procedure for procurement officer when bids are not received from a responsible bidder or offeror or responsive bidder or offeror; inserted (4) requiring the department to adopt rules for direct negotiation by procurement officer with vendor; inserted (5) pertaining to contracts with a landowner for certain remediation, reclamation, or conservation projects; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

Cross-References

Course of dealing and usage of trade, 30-1-205.
Powers and duties of Department of Corrections, 53-1-203.

18-4-134 through 18-4-140 reserved.

18-4-141. Contract transfers and collusion prohibited — violations and penalty. (1) A contract or order or any interest in a contract or order may not be transferred, assigned, or subcontracted by the party to whom the contract or order is given to any other party without the express written approval of the state, and the state may declare void any unapproved transfer, assignment, or subcontract.

(2) Collusion or secret agreements between vendors for the purpose of securing any advantage to the vendors as against the state in the awarding of contracts are prohibited. The state may declare the contract void if the department finds sufficient evidence after a contract

has been let that the contract was obtained by a vendor or vendors by reason of collusive or secret agreement among the vendors to the disadvantage of the state.

(3) All rights of action for a breach of a contract by the contracting parties are reserved to the state.

(4) A person who violates the provisions of 2-2-201 or this section, or both, is guilty of a misdemeanor and shall be fined an amount of not less than $500 or more than $5,000, and the state of Montana may at its option declare any contract in violation of the provisions of 2-2-201 or this section, or both, void ab initio.

History: En. Sec. 12, Ch. 66, L. 1923; re-en. Sec. 293.12, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1973; amd. Sec. 77, Ch. 326, L. 1974; amd. Sec. 5, Ch. 97, L. 1977; R.C.M. 1947, 82-1922; amd. Sec. 1, Ch. 52, L. 1983; MCA 1981, 18-4-105; redes. 18-4-141 by Code Commissioner, 1983; amd. Sec. 7, Ch. 443, L. 1997; amd. Sec. 17, Ch. 181, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 181 throughout (2) substituted references to "bidders" for references to "vendors"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

Cross-References

Public employees not to have interest in contracts, 2-2-201.
Breach of contract, 27-1-311.
Assignment of nonnegotiable written contract, 28-2-206.
When contract wholly void, 28-2-603.
When contract partially void, 28-2-604.
Illegal objects and provisions of contracts, Title 28, ch. 2, part 7.
U.C.C. — sales — delegation of performance and assignment of rights, 30-2-210.
Unfair trade practices, Title 30, ch. 14, part 2.
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Gifts to public servants having discretionary function in contract letting, 45-7-104.
Illegal interests in contracts, 45-7-401.

Part 2

Duties of Department

18-4-201 through 18-4-214. Repealed. Sec. 53, Ch. 519, L. 1983.

Compiler's Comments

Histories of Repealed Sections:

18-4-201. (1)En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; Sec. 82-1917, R.C.M. 1947; (2)En. Sec. 4, Ch. 197, L. 1921; re-en. Sec. 287, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1925; re-en. Sec. 287, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1939; amd. Sec. 3, Ch. 80, L. 1961; amd. Sec. 60, Ch. 326, L. 1974; Sec. 82-1904, R.C.M. 1947; R.C.M. 1947, 82-1904, 82-1917(1); amd. Sec. 3, Ch. 597, L. 1979.

18-4-202. En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; R.C.M. 1947, 82-1917(part); amd. Sec. 4, Ch. 597, L. 1979.

18-4-203. En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; R.C.M. 1947, 82-1917(3); amd. Sec. 5, Ch. 597, L. 1979.

18-4-204 through 28-4-210 reserved.

18-4-211. (1)En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; Sec. 82-1917, R.C.M. 1947; (2)En. Sec. 8, Ch. 197, L. 1921; re-en. Sec. 291, R.C.M. 1921; re-en. Sec. 291, R.C.M. 1935; amd. Sec. 63, Ch. 326, L. 1974; Sec. 82-1908, R.C.M. 1947; R.C.M. 1947, 82-1908, 82-1917(part).

18-4-212. En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; R.C.M. 1947, 82-1917(part); amd. Sec. 3, Ch. 58, L. 1979.

18-4-213. (1)En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; Sec. 82-1917, R.C.M. 1947; (2) thru (4)En. Sec. 11, Ch. 66, L. 1923; re-en. Sec. 293.11, R.C.M. 1935; amd. Sec. 76, Ch. 326, L. 1974; Sec. 82-1921, R.C.M. 1947; R.C.M. 1947, 82-1917(5), 82-1921(part); amd. Sec. 6, Ch. 597, L. 1979.

18-4-214. En. Sec. 5, Ch. 197, L. 1921; re-en. Sec. 288, R.C.M. 1921; re-en. Sec. 288, R.C.M. 1935; amd. Sec. 4, Ch. 80, L. 1961; amd. Sec. 61, Ch. 326, L. 1974; R.C.M. 1947, 82-1905; amd. Sec. 7, Ch. 597, L. 1979.

18-4-215 through 18-4-220 reserved.

18-4-221. General procurement authority and duties of department — rules. (1) Except as otherwise provided in this chapter, the department shall adopt rules, consistent with this chapter, governing the procurement and disposal of any and all supplies and services to be procured by the state. The department shall consider and decide matters of policy within the provisions of this chapter. The department may audit and monitor the implementation of its rules and the requirements of this chapter.

(2) Except as otherwise specifically provided by law, the department shall, in accordance with its rules:

(a) procure or supervise the procurement of all supplies and services needed by the state; and

(b) sell, trade, or otherwise dispose of surplus supplies belonging to the state.

(3) Nothing contained herein shall preclude the state from doing its own printing on its own printing facilities.

History: En. Sec. 6, Ch. 519, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Vehicles — requisitions for purchases, 2-17-403.
Sale of state property, Title 18, ch. 6, part 1.

18-4-222. Delegation of authority by department. Subject to the rules of the department, the director may delegate procurement authority to designees or to any state department, agency, or official.

History: En. Sec. 7, Ch. 519, L. 1983.

18-4-223. State procurement rules — delegation — existing rights. (1) Rules shall be adopted by the department in accordance with the applicable provisions of Title 2, chapter 4.

(2) The department may not delegate its power to adopt rules.

(3) No rule may change a commitment, right, or obligation of the state or of a contractor under a contract in existence on the effective date of such rule.

History: En. Sec. 8, Ch. 519, L. 1983.

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.
Rules — requisites for validity, 2-4-305.

18-4-224. Contract clauses — rules. (1) The department may, in its discretion, permit or require the inclusion of clauses providing for adjustments in prices, time of performance, or other appropriate contract provisions relating to the following subjects:

(a) the unilateral right of the state to order in writing:

(i) changes in the work within the scope of the contract; and

(ii) temporary work stoppage or delay of performance; and

(b) variations occurring between estimated quantities of work in a contract and actual quantities.

(2) Adjustments in price pursuant to clauses established under subsection (1) must be computed in one or more of the following ways:

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon after commencement of performance as practicable;

(b) by unit prices specified in the contract or subsequently agreed upon;

(c) by the costs attributable to the events or situations under clauses established under subsection (1) with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon; or

(d) in any other manner as the contracting parties may mutually agree.

(3) The department may, in its discretion, permit or require the inclusion in state contracts of clauses providing for appropriate remedies and relating to the following subjects:

(a) liquidated damages, as appropriate;

(b) specified excuses for delay or nonperformance;

(c) termination of the contract for default; and

(d) termination of the contract, in whole or in part, for the convenience of the state.

(4) The director or the head of a purchasing agency may vary the clauses established by the department under subsections (1) and (3) for inclusion in any particular state contract. Any variations must be supported by a written determination that states the circumstances justifying the variation. Notice of any material variation must be stated in the invitation for bids or request for proposals.

(5) Regardless of a provision in a contract, the department may accept a lower price or better value offered by a contractor.

History: En. Sec. 32, Ch. 519, L. 1983; amd. Sec. 8, Ch. 443, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

18-4-225. Repealed. Sec. 21, Ch. 443, L. 1997.

History: En. Sec. 33, Ch. 519, L. 1983.

18-4-226. Surplus supply — rules. (1) As used in this section, the following definitions apply:

(a) "Supplies" means supplies owned by the state.

(b) "Surplus supplies" means any supplies having a remaining useful life but that are no longer required by the agency in possession of them. This includes obsolete supplies, scrap materials, and supplies that have completed their useful life cycle.

(2) The department shall adopt rules governing:

(a) the management of supplies during their entire life cycle;

(b) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, donation to a school district as provided in 18-6-101, or other appropriate method designated by rule;

(c) transfer of surplus supplies.

(3) An employee of the owning or disposing agency directly involved with the disposal may not purchase supplies sold by the employee's agency.

(4) Proceeds from the sale, lease, or disposal of surplus supplies must be allocated as provided by 18-6-101, less a reasonable handling fee.

History: En. Secs. 34 thru 36, Ch. 519, L. 1983; amd. Sec. 3, Ch. 234, L. 1991; amd. Sec. 2, Ch. 441, L. 1999.

Cross-References

Equipment and supplies, Title 2, ch. 17, part 2.

18-4-227 through 18-4-230 reserved.

18-4-231. Definition of specification. As used in 18-4-231 through 18-4-234, "specification" means any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery.

History: En. Sec. 28, Ch. 519, L. 1983.

18-4-232. Specifications — rules. (1) The department shall adopt rules governing the preparation, maintenance, and content of specifications for supplies and services required by the state.

(2) The department shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies and services required by the state.

History: En. Sec. 29, Ch. 519, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

18-4-233. Using agencies' advice. The director may obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and utilize its own specifications.

History: En. Sec. 30, Ch. 519, L. 1983.

18-4-234. Competition. All specifications shall promote overall economy for the purposes intended and encourage competition in satisfying the state's needs and may not be unduly restrictive.

History: En. Sec. 31, Ch. 519, L. 1983.

18-4-235 through 18-4-240 reserved.

18-4-241. Authority to remove or suspend vendor. (1) The department may remove a vendor for cause from consideration for award of contracts by the state.

(2) The department may temporarily suspend a vendor from consideration for award of contracts if there is probable cause to believe that the vendor has engaged in activities that may lead to removal. If an indictment has been issued for an offense that would be a cause for removal under subsection (3), the suspension must, at the request of the attorney general, remain in effect at a minimum until after the trial of the suspended vendor. The authority to remove or suspend must be exercised in accordance with rules adopted by the department.

(3) The causes for removal or suspension include the following:

(a) violation of contract provisions, as set forth in subsections (3)(a)(i) and (3)(a)(ii), of a character that is regarded by the department to be so serious as to justify removal action:

(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for removal;

(b) failure to respond to a number of solicitations over a period of time as determined by the department in accordance with rules or failure to provide the department with a correct address;

(c) any other cause that the department determines to be so serious and compelling as to affect responsibility as a state contractor, including removal by another governmental entity; and

(d) failure to comply with the provisions of Title 39, chapter 51, or Title 39, chapter 71.

(4) The department shall issue a written decision to remove or suspend a vendor, stating the reasons for the action taken, for reasons other than those reasons provided in subsection (3)(b). A copy of the decision must be mailed or otherwise furnished immediately to the vendor involved.

History: En. Sec. 9, Ch. 519, L. 1983; amd. Sec. 26, Ch. 234, L. 1987; amd. Sec. 9, Ch. 443, L. 1997.

Cross-References

Breach of contract, 27-1-311.

18-4-242. Exclusive remedies for unlawful solicitation or award. (1) This section establishes the exclusive remedies for a solicitation or award of a contract determined to be in violation of the law.

(2) Except for small purchases or limited solicitations made pursuant to 18-4-305, a bidder, offeror, or contractor aggrieved in connection with the solicitation or award of a contract may protest to the department. The protest must be submitted to the department in writing no later than 14 days after execution of the contract.

(3) If the protest is not resolved by mutual agreement, the department shall issue in writing a decision on the protest within 30 days after receipt of the protest. The decision must:

(a) state the reason for the action taken by the department with regard to the contract; and

(b) inform the aggrieved party of the party's right to request, within 14 days after the date of the department's written decision, a contested case hearing pursuant to the Montana Administrative Procedure Act.

(4) In a protest or contested case proceeding, the department may, in an appropriate case, order a remedy provided in subsection (5) or (6).

(5) If before an award it is determined that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award may be:

(a) canceled; or

(b) revised to comply with the law.

(6) (a) If after an award it is determined that a solicitation or award of a contract is in violation of law and the person awarded the contract has not acted fraudulently or in bad faith, the contract may be:

(i) ratified and affirmed, provided it is determined that doing so is in the best interests of the state; or

(ii) terminated, and the person awarded the contract must be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, before the termination.

(b) If after an award it is determined that a solicitation or award of a contract is in violation of law and the person awarded the contract has acted fraudulently or in bad faith, the contract may be:

(i) declared void; or

(ii) ratified and affirmed if that action is in the best interests of the state, without prejudice to the state's rights to appropriate damages.

(7) The exclusive method of judicial review of a solicitation or award by the department pursuant to this chapter is by a petition for judicial review pursuant to 2-4-702. In a proceeding pursuant to that section, the court may, in an appropriate case, order a remedy provided by subsection (5) or (6) of this section. Except as provided in subsections (6)(a)(ii) and (6)(b)(ii), there is no right under any legal theory to recover a form of damages or expenses for a solicitation or award of a contract in violation of law. Any other claim, cause of action, or request for relief for solicitations or awards allegedly made in violation of law may not be heard or granted by a district court other than as provided in this section.

(8) The state is not required to delay, halt, or modify the procurement process pending the result of a protest, contested case proceeding, or judicial review.

(9) The department may adopt rules governing the protest of solicitations or awards.

History: En. Sec. 10, Ch. 519, L. 1983; amd. Sec. 10, Ch. 443, L. 1997; amd. Sec. 48, Ch. 51, L. 1999.

Cross-References

Conditional obligations, Title 28, ch. 1, part 4.
Alternative obligations, Title 28, ch. 1, part 5.
Novation, Title 28, ch. 1, part 15.
When proposal may be revoked, 28-2-511.
How proposal revoked, 28-2-512.
Modification of contracts, Title 28, ch. 2, part 16.
When party may rescind, 28-2-1711.

Part 3
Procurement Procedure

Part Cross-References

Department of Fish, Wildlife, and Parks — waterfowl stamp artwork — exemption, 87-2-412.

18-4-301. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Alternative procurement method" means a method of procuring supplies or services in a manner not specifically described in this chapter, but instead authorized by the department under 18-4-302.

(2) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs that are allowable and allocable in accordance with the contract terms and the provisions of this chapter and a fee, if any.

(3) (a) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

(4) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(5) "Invitation for bids" means all documents, whether attached or incorporated by reference, used for soliciting bids.

(6) "Office supply" means an item included under the office supply commodity class codes maintained by the department.

(7) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(8) "Request for proposals" means all documents, whether attached or incorporated by reference, used for soliciting proposals.

(9) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will ensure good faith performance.

(10) "Responsive bidder" means a person who has submitted a bid that conforms in all material respects to the invitation for bids.

(11) "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time. *(Terminates June 30, 2005—sec. 29, Ch. 181, L. 2001.)*

18-4-301. *(Effective July 1, 2005)* **Definitions.** As used in this part, the following definitions apply:

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs that are allowable and allocable in accordance with the contract terms and the provisions of this chapter and a fee, if any.

(2) (a) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

(3) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(4) "Invitation for bids" means all documents, whether attached or incorporated by reference, used for soliciting bids.

(5) "Office supply" means an item included under the office supply commodity class codes maintained by the department.

(6) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(7) "Request for proposals" means all documents, whether attached or incorporated by reference, used for soliciting proposals.

(8) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will ensure good faith performance.

(9) "Responsive bidder or offeror" means a person who has submitted a bid or proposal that conforms in all material respects to the invitation for bids or request for proposals.

(10) "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time.

History: En. Sec. 12, Ch. 519, L. 1983; amd. Sec. 1, Ch. 303, L. 1987; amd. Sec. 1, Ch. 761, L. 1991; amd. Secs. 18, 19, Ch. 181, L. 2001.

Compiler's Comments

2001 Amendment: (Temporary version) Chapter 181 inserted definition of alternative procurement method; and made minor changes in style. Amendment effective October 1, 2001, and terminates June 30, 2005.

(Version effective July 1, 2005) In definition of responsive bidder expanded definition to include "offeror", near middle after "bid" inserted "or proposal", and at end inserted "or request for proposals"; and made minor changes in style.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

18-4-302. Methods of source selection — authorization for alternative procurement methods. (1) Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by a source selection method provided for in this title. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

(2) When the department or another agency opens bids or proposals, if a supplier's current publicly advertised or established catalog price is received at or before the time that the bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or offeror or improves upon the conditions for the best proposal received using the same factors and weights included in the proposal, the department or agency may reject all bids and purchase the supply from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

(3) An office supply procured by the department's central stores program may be purchased by an agency, without meeting the requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised price, established catalog price, or discount price offered to the agency is less than the price offered by the central stores program if the office supply conforms in all material respects to the terms, conditions, and quality offered by the central stores program. A state office supply term contract must include a provision by which the contracting parties acknowledge and agree to the provisions of this subsection.

(4) (a) Under rules adopted by the department, an agency may request from the department authorization for an alternative procurement method.

(b) A request for authorization must specify:

(i) the problem to be solved;

(ii) the proposed alternative procurement method;

(iii) the reasons why the alternative procurement method may be more appropriate than a method authorized by law; and

(iv) how competition and fairness will be achieved by the alternative procurement method.

(c) Within 30 days after receiving the request, the department shall:

(i) evaluate the request;

(ii) approve or deny the request; and

(iii) issue a written statement providing the reasons for its decision.

(d) Whenever the department approves a request submitted under this section, the department:

(i) may authorize the alternative procurement method on a trial basis; and

(ii) if the alternative procurement method is employed, shall make a written determination as to the success of the method.

(e) If the department determines that the alternative procurement method is successful and should be an alternative that is generally available, it shall promulgate rules that establish the use of the alternative procurement method as an additional source selection method. The rules promulgated by the department under this subsection must reflect the purposes described in 18-4-122. *(Subsection (4) terminates June 30, 2005—sec. 29, Ch. 181, L. 2001.)*

History: En. Sec. 13, Ch. 519, L. 1983; amd. Sec. 2, Ch. 303, L. 1987; amd. Sec. 1, Ch. 329, L. 1989; amd. Sec. 1, Ch. 11, Sp. L. November 1993; amd. Sec. 11, Ch. 443, L. 1997; amd. Sec. 20, Ch. 181, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 181 inserted (4) allowing an agency to request authorization for an alternative procurement method, establishing guidelines for the request for authorization, establishing guidelines for evaluation and approval of the request, and providing for promulgation of rules establishing the use of alternative procurement methods; and made minor changes in style. Amendment effective October 1, 2001, and terminates June 30, 2005.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

18-4-303. Competitive sealed bidding. (1) An invitation for bids must be issued and must include a purchase description and conditions applicable to the procurement.

(2) Adequate public notice of the invitation for bids must be given a reasonable time before the date set forth in the invitation for the opening of bids, in accordance with rules adopted by the department. Notice may include publication in a newspaper of general circulation at a reasonable time before the bid opening.

(3) Bids must be opened publicly at the time and place designated in the invitation for bids. Each bidder has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids. The amount of each bid and other relevant information as may be specified by rule, together with the name of each bidder, must be recorded. The record must be open to public inspection. After the time of award, all bids and bid documents must be open to public inspection in accordance with the provisions of 2-6-102 and are subject to the requirements of subsection (4).

(4) Bids must be available for public inspection when the bids are opened if:

(a) the invitation for bids is issued by a state agency to contract with the private sector to provide services currently conducted by state employees; and

(b) acceptance of bids would result in the displacement of five or more state employees.

(5) Bids must be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. The invitation for bids must set forth the evaluation criteria to be used. Only criteria set forth in the invitation for bids may be used in bid evaluation.

(6) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on bid mistakes may be permitted in accordance with rules adopted by the department. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may not be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes must be supported by a written determination made by the department.

(7) The contract must be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, including the preferences established by Title 18, chapter 1, part 1. If all bids exceed available funds as certified by the appropriate fiscal officer and the low responsible and responsive bid does not exceed the funds by more than 5%, the director or the head of a purchasing agency may, in situations in which time or economic considerations preclude resolicitation of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsible and responsive bidder in order to bring the bid within the amount of available funds.

(8) When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

History: **En. Sec. 14, Ch. 519, L. 1983; amd. Sec. 2, Ch. 761, L. 1991; amd. Sec. 12, Ch. 443, L. 1997.**

Cross-References

Public officers, employees, and former employees not to have interest in contracts, 2-2-201.

18-4-304. Competitive sealed proposals. (1) The department may procure supplies and services through competitive sealed proposals.

(2) Proposals must be solicited through a request for proposals.

(3) Adequate public notice of the request for proposals must be given in the same manner as provided in 18-4-303(2).

(4) After the proposals have been opened at the time and place designated in the request for proposals, proposal documents may be inspected by the public, subject to the limitations of:

(a) the Uniform Trade Secrets Act, Title 30, chapter 14, part 4;

(b) matters involving individual safety as determined by the department;

(c) information requested by the department to establish vendor responsibility unless prior written consent has been given by the vendor, pursuant to 18-4-308; and

(d) other constitutional protections.

(5) The request for proposals must state the evaluation factors and their relative importance. The award must be made to the responsible and responsive offeror whose proposal best meets the evaluation criteria. Other factors or criteria may not be used in the evaluation. The contract file must demonstrate the basis on which the award is made.

(6) The department may discuss a proposal with an offeror for the purpose of clarification or revision of the proposal.

History: En. Sec. 15, Ch. 519, L. 1983; amd. Sec. 10, Ch. 130, L. 1995; amd. Sec. 13, Ch. 443, L. 1997; amd. Sec. 2, Ch. 416, L. 1999.

18-4-305. Small purchases and limited solicitations. Any procurement not exceeding the amount established by rule may be made in accordance with small purchase or limited solicitation procedures established by the department. Procurement requirements may not be artificially divided so as to constitute a small purchase or limited solicitation under this section.

History: En. Sec. 16, Ch. 519, L. 1983; amd. Sec. 14, Ch. 443, L. 1997.

Cross-References

Small business preferences, Title 18, ch. 5, part 3.

18-4-306. Sole source procurement — records. (1) A contract may be awarded for a supply or service item without competition when, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that:

(a) there is only one source for the supply or service item;

(b) only one source is acceptable or suitable for the supply or service item; or

(c) the supply or service item must be compatible with current supplies or services.

(2) The department may require the submission of cost or pricing data in connection with an award under this section.

(3) The department shall maintain or shall require the head of a purchasing agency to maintain a record listing all contracts made under this section for a minimum of 4 years. The record must contain:

(a) each contractor's name;

(b) the amount and type of each contract; and

(c) a listing of the supplies or services procured under each contract.

(4) The record must be available for public inspection.

History: En. Secs. 17, 27, Ch. 519, L. 1983; amd. Sec. 21, Ch. 181, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 181 in (1)(a) before "supply" deleted "required"; inserted (1)(b) referring to the existence of only one source of the supply or service item; inserted (1)(c) requiring the supply or service item to be compatible with existing supplies or services; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

Cross-References

Public records management, Title 2, ch. 6, part 2.

18-4-307. Cancellation of invitations for bids or requests for proposals. An invitation for bids, a request for proposals, or other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part, as may be specified in the solicitation, when it is in the best interests of the state. The reasons therefor must be made part of the contract file.

History: En. Sec. 18, Ch. 519, L. 1983.

18-4-308. Nonresponsibility of bidders and offerors — nondisclosure. (1) A written determination of nonresponsibility of a bidder or offeror must be made in accordance with rules adopted by the department. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(2) Information furnished by a bidder or offeror pursuant to this section may not be disclosed outside of the department or the purchasing agency without prior written consent by the bidder or offeror.

History: **En. Sec. 19, Ch. 519, L. 1983.**

18-4-309. Prequalification of suppliers. Prospective suppliers may be prequalified in accordance with department rules for particular types of supplies and services.

History: **En. Sec. 20, Ch. 519, L. 1983; amd. Sec. 15, Ch. 443, L. 1997.**

18-4-310. Types of contracts. Any type of contract that will promote the best interests of the state may be used.

History: **En. Sec. 21, Ch. 519, L. 1983; amd. Sec. 16, Ch. 443, L. 1997.**

18-4-311. Approval of accounting system. Except with respect to firm fixed-price contracts, no contract type may be used unless it has been determined in writing by the department that:

(1) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(2) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

History: **En. Sec. 22, Ch. 519, L. 1983.**

Cross-References

Access to records of contracting entities, 18-1-118.

18-4-312. Bid and contract performance security. (1) For state contracts for the procurement of services or of supplies, the department may in its discretion require:

(a) bid security;

(b) contract performance security to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, mechanics, and subcontractors; or

(c) both bid and contract performance security.

(2) If security is required under subsection (1), the following types of security may be required to be deposited with the state:

(a) a sufficient bond with a licensed surety company as surety;

(b) an irrevocable letter of credit not to exceed $100,000 in accordance with the provisions of Title 30, chapter 5, part 1;

(c) money of the United States;

(d) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, or bank draft that is drawn or issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation or that is drawn and issued by a credit union insured by the national credit union share insurance fund.

(3) The amount and type of the security must be determined by the department to be sufficient to cover the risk involved to the state. The security must be payable to the state of Montana. Contract performance security must remain in effect for the entire contract period. In determining the amount and type of contract performance security required for each contract, the department shall consider the nature of the performance and the need for future protection to the state. In determining the need for and amount of bid security, the department shall consider the risks involved to the state if a successful bidder or offeror fails to enter into a formal contract. The considerations must include but are not limited to the type of supply or service being procured, the dollar amount of the proposed contract, and delivery time requirements. The department may adopt rules to assist it in making these determinations and in protecting the state in dealing with irrevocable letters of credit. Bid and contract security requirements must be included in the invitations for bids or requests for proposals.

(4) If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract or provide contract performance security, as required by the invitation for bid or request for proposal, after notification of award, the department may, in its discretion, require the bidder to forfeit the bid security to the state and become immediately liable on the bid security, but not in excess of the sum stated in the security. The liability of the bidder or offeror,

the maker of the security or bid bond, or the liability on the bid bond or other security may not exceed the amount specified in the invitation for bid or request for proposal.

(5) Negotiable instruments provided as bid security must be refunded to those bidders or offerors whose bids or proposals are not accepted.

(6) The provisions of Title 18, chapter 1, part 2, and Title 18, chapter 2, parts 2 and 3, do not apply to procurements under this chapter.

History: En. Sec. 23, Ch. 519, L. 1983; amd. Sec. 2, Ch. 424, L. 1985; amd. Sec. 11, Ch. 130, L. 1995; amd. Sec. 17, Ch. 443, L. 1997.

Cross-References

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

18-4-313. Contracts — terms, extensions, and time limits. (1) Unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a period of more than 7 years. However, the department may contract for hardware, software, or other information technology resources, the department of revenue may contract with liquor agencies, and the department of public health and human services may contract for the medicaid management information system (MMIS) for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period at the time of the agreement, and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) If funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.

History: En. Sec. 24, Ch. 519, L. 1983; amd. Sec. 1, Ch. 121, L. 1985; amd. Sec. 3, Ch. 228, L. 1993; amd. Sec. 12, Ch. 130, L. 1995; amd. Sec. 63, Ch. 546, L. 1995; amd. Sec. 22, Ch. 181, L. 2001; amd. Secs. 40, 46, Ch. 313, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section — Coordination: Chapter 181 in (1) near middle of second sentence after "purchase of" substituted "hardware, software, or services for telecommunications or data processing" for "telecommunications equipment and systems, data processing equipment"; and made minor changes in style. Amendment effective October 1, 2001. The amendment by Ch. 313 rendered the reference to services for telecommunications or data processing meaningless, and it has not been codified.

Chapter 313 in (1) in second sentence substituted "contract for hardware, software, or other information technology resources" for "contract for the lease or purchase of telecommunications equipment and systems, data processing equipment"; and made minor changes in style. Amendment effective July 1, 2001.

Pursuant to sec. 46, Ch. 313, L. 2001, a coordination section, the amendment to this section made by sec. 40, Ch. 313, L. 2001, was replaced by the amendment made by sec. 46.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

Cross-References

Information technology, Title 2, ch. 17, part 5.

Alcohol administration and taxation, Title 16, ch. 1.

Retroactive application, 18-4-132.

Contracts — what is unlawful, 28-2-701.

Time of performance, Title 28, ch. 3, part 6.

Medical assistance — Medicaid, Title 53, ch. 6, part 1.

18-4-314. Reporting of anticompetitive practices. If for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general by the department.

History: En. Sec. 25, Ch. 519, L. 1983.

Cross-References

Unfair trade practices, Title 30, ch. 14, part 2.

Part 4
Cooperative Purchasing

18-4-401. Definitions. As used in this part, the following definitions apply:

(1) "Cooperative purchasing" means procurement conducted by or on behalf of more than one public procurement unit.

(2) "Local public procurement unit" means a county, city, town, or other subdivision of the state or a public agency of any such subdivision; public authority; educational, health, or other institution; to the extent provided by law, any other entity that expends public funds for the procurement of supplies and services; and any nonprofit corporation operating a charitable hospital.

(3) "Public procurement unit" means a local or state public procurement unit of this or any other state, including an agency of the United States, or a tribal procurement unit.

(4) "State public procurement unit" means a state department, agency, or official that expends public funds for the procurement of supplies and services.

(5) "Tribal procurement unit" means a tribal government, tribal entity, or official of a tribal government located in Montana that expends tribal funds or funds administered by a tribe for the procurement of supplies and services to the extent provided by tribal or federal law.

History: En. Sec. 37, Ch. 519, L. 1983; amd. Sec. 1, Ch. 200, L. 1999.

18-4-402. Cooperative purchasing authorized. The department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services with one or more public procurement units in accordance with an agreement entered into between the participants independent of the requirements of part 3. Cooperative purchasing may include purchasing through federal supply schedules of the United States general services administration, joint or multiparty contracts between public procurement units and open-ended state public procurement unit contracts that are made available to local public procurement units.

History: En. Sec. 38, Ch. 519, L. 1983; amd. Sec. 18, Ch. 443, L. 1997.

18-4-403. Sale, acquisition, or use of supplies by a public procurement unit. The department may sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of part 3.

History: En. Sec. 39, Ch. 519, L. 1983.

18-4-404. Cooperative use of supplies or services. The department may enter into an agreement, independent of the requirements of part 3, with any other public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

History: En. Sec. 40, Ch. 519, L. 1983.

Cross-References

Procurement of services, Title 18, ch. 8.

18-4-405. Joint use of facilities. The department may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

History: En. Sec. 41, Ch. 519, L. 1983.

18-4-406. Information and services — fees. (1) Upon request, the department may make available to public procurement units certain services, including but not limited to the following:

(a) standard forms;
(b) printed manuals;
(c) product specifications and standards;
(d) quality assurance testing services and methods;
(e) qualified products lists;
(f) source information;
(g) common use commodities listings;
(h) supplier prequalification information;
(i) supplier performance ratings;

(j) debarred and suspended bidders lists;

(k) forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms;

(l) contracts or published summaries thereof, including price and time of delivery information; and

(m) cooperative purchasing.

(2) The state, through the department, may provide technical services, including but not limited to the following:

(a) development of product specifications;

(b) development of quality assurance test methods, including receiving, inspection, and acceptance procedures;

(c) use of product testing and inspection facilities; and

(d) use of personnel training programs.

(3) The department may enter into contractual arrangements and publish a schedule of fees for the services provided under subsections (1) and (2). Such fees may be used by the department to offset costs incurred in providing such services.

History: En. Sec. 42, Ch. 519, L. 1983.

18-4-407. Review of procurement requirements. To the extent possible, the department may collect information concerning the type, cost, quality, and quantity of commonly used supplies or services being procured or used by state public procurement units. The department may make available all such information to any public procurement unit upon request.

History: En. Sec. 43, Ch. 519, L. 1983.

CHAPTER 5

SPECIAL PURCHASING CONDITIONS

Part 1 — Sheltered Workshops

18-5-101. Definitions.
18-5-102. Duties and powers of department of administration.
18-5-103. Procurement requirements.
18-5-104. Repealed.

Part 2 — Surplus Property Procurement

18-5-201. Administration of the state agency for federal surplus property.
18-5-202. Authority and duties of the state agency for surplus property.
18-5-203. Agency for surplus property — authorization for financing.
18-5-204. Department director — delegating powers.
18-5-205. Officers or employees authorized to secure transfer of federal surplus property.

Part 3 — Small Business Preferences
(Repealed June 30, 2003)

18-5-301. Short title.
18-5-302. Statement of purpose and policy.
18-5-303. Definitions.
18-5-304. Designation of small business set-asides.
18-5-305. Withdrawal of small business set-aside designation.
18-5-306. Repealed.
18-5-307. Repealed.
18-5-308. Construction with other sections.

Part 4 — Vending Facilities

18-5-401. Purpose.
18-5-402. Definitions.
18-5-403. Certification and eligibility of blind persons.
18-5-404. Vending facilities, equipment, and supplies — available to certified blind persons.
18-5-405. Right to fair hearing.
18-5-406. Health and retirement fund — services to vendors.
18-5-407 through 18-5-410 reserved.

18-5-411. Administration of vending facilities — state properties.
18-5-412. Administration of vending facilities on other property.
18-5-413. Implementation of Randolph-Sheppard Act, as amended.
18-5-414. Authority to adopt rules.
18-5-415. Operation of facilities.
18-5-416. Vending machines.

Part 5 — Blind Person Preference

18-5-501. Definitions.
18-5-502. Preference to blind persons.
18-5-503. Application of state procurement law.
18-5-504. Blind preference rules.

Part 6 — Nonvisual Access Technology Procurement

18-5-601. Findings — policy.
18-5-602. Definitions.
18-5-603. Nonvisual access ensured.
18-5-604. Procurement requirements.
18-5-605. Implementation.

Part 1
Sheltered Workshops

Part Cross-References

Sheltered workshops, Title 53, ch. 7, part 2.

18-5-101. Definitions. As used in this part, the following definitions apply:

(1) "Certified sheltered workshop" or "work activity center" means a nonprofit corporation incorporated under the laws of the state for the purpose of providing vocational services to persons with disabilities, in whole or in part, that:

(a) holds a current certificate issued by the United States department of labor for either one or all of the following:

(i) evaluation or training;

(ii) a regular work program; or

(iii) a work activity center;

(b) complies with other applicable occupational, health, and safety standards of local, state, and federal governments governing the operation of the facility not otherwise included in this part;

(c) in the manufacture of products and in the provision of service, whether or not the product or service is procured under this part, employs and trains persons with disabilities for not less than 75% of the hours of direct labor required for the manufacture of products or the provision of service; and

(d) is referred to as a "facility".

(2) "Department" means the department of administration.

(3) "Person with a disability" means an individual with a physical, mental, or emotional disability that constitutes a substantial impediment to employment and that prevents the individual with the disability from engaging in normal competitive employment.

History: En. 82-1941 by Sec. 1, Ch. 547, L. 1977; R.C.M. 1947, 82-1941; amd. Sec. 16, Ch. 472, L. 1997.

Cross-References

Nonprofit corporations, Title 35, ch. 2.
Vocational rehabilitation, Title 53, ch. 7.
Sheltered employment defined, 53-7-202.
Persons with developmental disabilities, Title 53, ch. 20.

18-5-102. Duties and powers of department of administration. (1) The department shall maintain a current list of facilities located in this state, including a list of products and services provided by each facility, based on information provided by the facilities. A facility requesting to be included on the list shall indicate the products and services available from it and shall provide the department with updated information, as necessary.

(2) The department may contract with a nonprofit organization to:

(a) certify facilities;
(b) provide technical assistance to facilities on matters of product or service capabilities;
(c) facilitate distribution of orders among facilities and to ensure equal opportunity in obtaining orders.

(3) The department shall adopt, revise, and amend rules to implement this part in accordance with the procedures of the Montana Administrative Procedure Act.

History: En. 82-1942 by Sec. 2, Ch. 547, L. 1977; R.C.M. 1947, 82-1942; amd. Sec. 1, Ch. 270, L. 1985; amd. Sec. 17, Ch. 472, L. 1997.

Cross-References
Proof of market price — time and place, 30-2-723.
Sheltered workshops — legislative findings and purpose, 53-7-201.
Purchase of sheltered employment services, 53-7-203.

18-5-103. Procurement requirements. State departments, institutions, and agencies may procure listed products and services from a facility. The provisions of this title relating to competitive bidding do not apply to purchases made in accordance with this part.

History: En. 82-1943 by Sec. 3, Ch. 547, L. 1977; R.C.M. 1947, 82-1943; amd. Sec. 2, Ch. 270, L. 1985; amd. Sec. 18, Ch. 472, L. 1997.

Cross-References
Purchase of sheltered employment services, 53-7-203.

18-5-104. Repealed. Sec. 7, Ch. 58, L. 1979.

History: En. 82-1938, 82-1939, 82-1940 by Secs. 1, 2, 3, Ch. 123, L. 1974; R.C.M. 1947, 82-1938, 82-1939, 82-1940.

Part 2
Surplus Property Procurement

18-5-201. Administration of the state agency for federal surplus property. There is a Montana state agency for federal surplus property that is administered by a department designated by the governor. The director of the department may prescribe the duties of personnel needed to carry out the duties under this part.

History: En. Sec. 1, Ch. 136, L. 1953; amd. Sec. 1, Ch. 478, L. 1977; R.C.M. 1947, 82-3101; amd. Sec. 2, Ch. 485, L. 1989.

Cross-References
State agency for surplus property, 2-15-1011.
Acceptance of federal facilities and installations, 77-1-212.

18-5-202. Authority and duties of the state agency for surplus property. (1) The state agency for surplus property is hereby authorized and empowered to:

(a) acquire from the United States of America under and in conformance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, hereinafter referred to as the "act", such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for purposes authorized by the act;
(b) warehouse such property; and
(c) distribute such property within the state to eligible participants.

(2) The state agency for surplus property is hereby authorized to receive applications from eligible participants for the acquisition of federal surplus real property, investigate the same, obtain expression of views respecting such applications from the appropriate authorities of the state, make recommendations regarding the need of such applicant for the property, the merits of its proposed program of utilization, the suitability of the property for such purposes, and otherwise assist in the processing of such applications for acquisition of real and related personal property of the United States under section 203(k) of the act as amended.

(3) For the purpose of executing its authority under this part, the state agency for surplus property is authorized and empowered to adopt, amend, or rescind such rules and prescribe such requirements as may be deemed necessary and take such other action as is deemed necessary and suitable in the administration of this part to assure maximum utilization by and benefit to participants within the state from property distributed under this part.

(4) The state agency for surplus property is authorized and empowered to make such certifications, take such action, make such expenditures, and enter into such contracts, agreements, and undertakings for and in the name of the state (including cooperative agreements with any federal agencies providing for utilization by and exchange between them of the property, facilities, personnel, and services of each by the other), require such reports and make such investigation as may be required by law or regulation of the United States of America in connection with the disposal of real property and the receipt, warehousing, and distribution of personal property received by the state agency for surplus property from the United States of America.

(5) The state agency for surplus property is authorized and empowered to act as clearinghouse of information for eligible participants to locate both real and personal property available for acquisition from the United States of America, to ascertain the terms and conditions under which such property may be obtained, to receive requests from eligible participants and to transmit to them all available information in reference to such property, and to aid and assist eligible participants in every way possible in the consummation of acquisitions or transactions hereunder.

(6) The state agency for surplus property, in the administration of this part, shall cooperate to the fullest extent consistent with the provisions of the act, with the departments or agencies of the United States of America and shall file a state plan of operation, operate in accordance therewith, and take such action as may be necessary to meet the minimum standards prescribed in accordance with the act; make such reports in such form and containing such information as the United States of America or any of its departments or agencies may from time to time require; and comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use, or accounting for property donable or donated to the state.

History: En. Sec. 2, Ch. 136, L. 1953; amd. Sec. 1, Ch. 166, L. 1957; amd. Sec. 2, Ch. 478, L. 1977; R.C.M. 1947, 82-3102.

Cross-References

Public land trust — disposition, Art. X, sec. 11, Mont. Const.

Fish and wildlife — state-federal relationships, Title 87, ch. 1, part 7.

18-5-203. Agency for surplus property — authorization for financing. The state agency for surplus property must be self-sustaining and shall pay for its operation and maintenance directly from receipts from surplus property that must be deposited in the treasury in an enterprise fund.

History: En. Sec. 4, Ch. 136, L. 1953; amd. Sec. 66, Ch. 147, L. 1963; amd. Sec. 1, Ch. 389, L. 1977; amd. Sec. 3, Ch. 478, L. 1977; R.C.M. 1947, 82-3104; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 42, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 42 at end substituted "an enterprise fund" for "an internal service fund"; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Fund structure, 17-2-102.

18-5-204. Department director — delegating powers. The director of the department may delegate to any employees of the state agency for surplus property such power and authority as he deems reasonable and proper for the effective administration of this part.

History: En. as addition to Ch. 31, Title 82, 1947 Code by Sec. 2, Ch. 166, L. 1957; amd. Sec. 49, Ch. 177, L. 1965; amd. Sec. 4, Ch. 478, L. 1977; R.C.M. 1947, 82-3105.

Cross-References

Bonds of state officers and employees, Title 2, ch. 9, part 6.

18-5-205. Officers or employees authorized to secure transfer of federal surplus property. (1) Notwithstanding any provision of law to the contrary, the governing board or, if there is none, the executive head of a state department or agency or of a city, county, school district, or other political subdivision may by order or resolution confer upon an officer or employee continuing authority to:

(a) secure the transfer to it of surplus property under this part through the department designated in 18-5-201 under the provisions of section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended; and

(b) obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of the transfers.

(2) The authority conferred upon an officer or employee by an order or resolution remains in effect until the order or resolution is revoked and written notice of the revocation has been received by the department.

History: **En. as addition to Ch. 31, Title 82, 1947 Code by Sec. 3, Ch. 166, L. 1957; amd. Sec. 5, Ch. 478, L. 1977; R.C.M. 1947, 82-3106; amd. Sec. 3, Ch. 485, L. 1989.**

Part 3
Small Business Preferences
(Repealed June 30, 2003)

Part Cross-References

Public contracts — preferences, Title 18, ch. 1, part 1.

Small purchases, 18-4-305.

18-5-301. *(Temporary)* **Short title.** This part shall be known and may be cited as the "Montana Small Business Purchasing Act". *(Repealed effective June 30, 2003—secs. 4(2), 5(2), Ch. 271, L. 1999.)*

History: **En. 82-1929 by Sec. 1, Ch. 204, L. 1974; R.C.M. 1947, 82-1929.**

18-5-302. *(Temporary)* **Statement of purpose and policy.** It is the purpose of this part and is hereby declared to be the policy of this state that, whereas the existence of a strong and healthy free enterprise system is directly related to the well-being and competitive strength of small business concerns and to the opportunity for small businesses to have free entry into business, to grow, and to expand, the state shall insure that a fair proportion of its total purchases and contracts for property and services be placed with small business concerns. *(Repealed effective June 30, 2003—secs. 4(2), 5(2), Ch. 271, L. 1999.)*

History: **En. 82-1930 by Sec. 2, Ch. 204, L. 1974; R.C.M. 1947, 82-1930.**

Cross-References

Unfair competition in purchasing, 30-14-208.

18-5-303. *(Temporary)* **Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means any department, division, or agency of the state of Montana.

(2) "Small business" means a business that is independently owned and operated. The department of administration shall establish a detailed definition by rule using, in addition to the foregoing criteria, other criteria. Small business shall further mean a business domiciled in the state of Montana and that employs more than 50% of its total employed personnel within the boundaries of the state of Montana.

(3) "Small business set-aside" means a purchase request for which bids are to be invited and accepted only from small businesses by a department. *(Repealed effective June 30, 2003—secs. 4(2), 5(2), Ch. 271, L. 1999.)*

History: **En. 82-1931 by Sec. 3, Ch. 204, L. 1974; R.C.M. 1947, 82-1931; amd. Sec. 1, Ch. 271, L. 1999.**

18-5-304. *(Temporary)* **Designation of small business set-asides.** (1) Each department has authority to designate as small business set-asides specified commodities, equipment, or services, except those services rendered and furnished by registered professions, such as but not limited to accountants, attorneys, architects, dentists, engineers, land surveyors, optometrists, physicians, and pharmacists, for which purchase has been requested under the Montana Small Business Purchasing Act.

(2) In the case of purchase designated as small business set-asides, invitations to bid must be confined to small businesses, and bids from other businesses must be rejected. The purchase, contract, or expenditure of funds must be awarded to the lowest responsible bidder among the small businesses, considering conformity with specifications and terms, in accordance with the

rules for purchasing published by the department. *(Repealed effective June 30, 2003—secs. 4(2), 5(2), Ch. 271, L. 1999.)*

History: En. 82-1932 by Sec. 4, Ch. 204, L. 1974; amd. Sec. 7, Ch. 97, L. 1977; R.C.M. 1947, 82-1932; amd. Sec. 2, Ch. 271, L. 1999.

Cross-References

Purchases exempt from general requirements, 18-4-133.

Professions and Occupations, Title 37.

18-5-305. *(Temporary)* **Withdrawal of small business set-aside designation.** If a department determines that acceptance of the best bid will result in the payment of an unreasonable price, the department shall reject all bids and withdraw the designation of small business set-aside. *(Repealed effective June 30, 2003—secs. 4(2), 5(2), Ch. 271, L. 1999.)*

History: En. 82-1933 by Sec. 5, Ch. 204, L. 1974; R.C.M. 1947, 82-1933; amd. Sec. 3, Ch. 271, L. 1999.

18-5-306. Repealed. Sec. 4, Ch. 271, L. 1999.

History: En. 82-1934 by Sec. 6, Ch. 204, L. 1974; R.C.M. 1947, 82-1934.

18-5-307. Repealed. Sec. 4, Ch. 271, L. 1999.

History: En. 82-1935 by Sec. 7, Ch. 204, L. 1974; R.C.M. 1947, 82-1935.

18-5-308. *(Temporary)* **Construction with other sections.** Procurement from small businesses under this part is subject to all other statutes governing state procurement and all rules promulgated under those statutes, except that in case of conflict, this part governs and the provisions set forth in 18-1-102 do not apply. *(Repealed effective June 30, 2003—secs. 4(2), 5(2), Ch. 271, L. 1999.)*

History: En. 82-1936 by Sec. 8, Ch. 204, L. 1974; R.C.M. 1947, 82-1936; amd. Sec. 23, Ch. 181, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 181 near end after "18-1-102" deleted "18-1-111, and 18-1-112"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

Cross-References

Procurement generally, Title 18, ch. 4.

Part 4
Vending Facilities

Part Cross-References

Blind person preference, Title 18, ch. 5, part 5.

18-5-401. Purpose. It is the purpose of this part, in recognition of the vocational and economic needs of blind persons, to make available to those blind persons in need of vocational opportunities space in state, federal, or other property appropriate for certain business operations and to assist those persons in the development of business operations.

History: En. Sec. 1, Ch. 175, L. 1981.

18-5-402. Definitions. As used in this part, the following definitions apply:

(1) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision in the better eye to such a degree that the widest diameter of the visual field subtends an angle no greater than 20 degrees as determined by an ophthalmologist or a physician skilled in diseases of the eye.

(2) "Blind vendor" means a person certified as a blind person for the purpose of this part and who is operating a vending facility administered by the department.

(3) "Certified blind person" means a blind person whom the department has determined to be a blind person as defined in this part who is in need of vocational opportunities, and who is qualified to operate a vending facility.

(4) "Department" means the department of public health and human services.

(5) "Federal property" means buildings or portions of buildings or other real property owned or leased by the federal government excluding military reservations upon which the department may administer vending facilities by an agreement entered into under the authority of the federal Randolph-Sheppard Act, as amended.

(6) "Other property" means all real property other than state or federal property as defined in this part.

(7) "State property" means those buildings or portions of buildings or other real property owned or leased under a lease-purchase agreement, or in the case of a building, leased in its entirety by the state or agencies of the state that are utilized in the conduct of state matters and occupied principally by state employees. State property for the purpose of this part does not include vocational institutions or institutions of higher education.

(8) "Vending facility" means an area and equipment inclusive of vending machines on state property which is or may be utilized in providing a food, beverage, or other service to employees and other persons present on the property.

(9) "Vending machine" means a device for the dispensing of foodstuffs, liquids, or other products when money is inserted into the device. Vending machine does not include postage stamp machines or coin-operated telephones.

(10) "Vocational rehabilitation programs" means those programs provided for under the federal Randolph-Sheppard Act, as amended, and Title 53, chapter 7, part 3.

History: En. Sec. 2, Ch. 175, L. 1981; amd. Sec. 64, Ch. 546, L. 1995.

18-5-403. Certification and eligibility of blind persons. (1) The department shall certify for the purposes of this part and the federal Randolph-Sheppard Act, as amended, those persons who are blind persons as defined in this part who the department has determined are in need of vocational opportunities and are qualified to operate vending facilities.

(2) Any person or vendor operating a vending facility under the auspices of the blind vendor program administered by the department prior to October 1, 1981, may be certified as a blind vendor for the purposes of this part.

(3) Only certified blind persons are eligible for the vocational opportunities provided in this part.

History: En. Sec. 3, Ch. 175, L. 1981.

18-5-404. Vending facilities, equipment, and supplies — available to certified blind persons. (1) The department may make available to a certified blind person a vending facility appropriate for providing that person with a business opportunity determined by the department to be suitable for that person.

(2) The department may, through the vocational rehabilitation programs it administers, provide by sale, lease, loan, or grant such equipment, stocks, and supplies as may be necessary for a blind vendor to establish or improve a vending facility business. The department shall retain a first option to repurchase any equipment it has sold to a blind vendor.

History: En. Sec. 4, Ch. 175, L. 1981.

18-5-405. Right to fair hearing. A blind vendor is entitled to a fair hearing for any grievance against the department.

History: En. Sec. 8, Ch. 175, L. 1981.

18-5-406. Health and retirement fund — services to vendors. (1) The department may manage a health and retirement fund for blind vendors.

(2) The department may set aside a reasonable percentage of the net incomes earned by blind vendors from the operation of vending facilities on state and other property administered by the department to fund the operation of vending facilities and to fund the blind vendors' health and retirement fund.

(3) The department may use all net income earned from facilities operated under the provisions of 18-5-415(2) and 18-5-416 to fund services to blind vendors and to fund the blind vendors' health and retirement fund.

History: En. Sec. 6, Ch. 175, L. 1981.

18-5-407 through 18-5-410 reserved.

18-5-411. Administration of vending facilities — state properties. (1) The department of administration or any other department of state government that administers state property subject to this part shall transfer to the department the management and control of any vending facility that the department has determined is an appropriate facility for the purposes of this part and that the department has determined is needed for the purposes of this part.

(2) A lease or contract for the operation of a vending facility entered into prior to October 1, 1981, is not subject to this part while the lease or contract remains in effect. In addition, this part may not be interpreted to require or authorize the failure to renew any contract for a vending facility on state property in effect on October 1, 1981, if the contract contains a provision permitting the renewal of the contract for a specific term at the option of the vendor or the state or both. In any case where the department determines that a private vendor operating a vending facility on state property on October 1, 1981, who but for this part could reasonably be expected to renew his contract for the vending facility, would be subjected to economic hardship should the contract be allowed to expire at the end of its term, the department may agree to a one-time renewal of that vendor's contract for the vending facility for a period not to exceed 4 years.

(3) The department of administration or any other department of state government that administers state property subject to this part shall give reasonable notice to the department of the expiration or termination of any lease or contract in effect for a vending facility.

(4) Upon receipt of the notice, the department shall give reasonable notice to the department of administration or other department of state government that sent the notice required in subsection (3) stating that the department has determined that the vending facility is either appropriate and needed for the purposes of this part or that it is not.

(5) A state agency administering state property shall consult with the department when planning for a new state building, planning for remodeling of or addition to an existing state building, or negotiating the lease of a building for state use, to determine what vending facilities might be appropriate for the site and plan for such vending facilities.

(6) The department shall administer those vending facilities which are determined to be appropriate and necessary.

History: En. Sec. 5, Ch. 175, L. 1981.

18-5-412. Administration of vending facilities on other property. The department may enter into agreements with private parties or governmental entities not otherwise coming under the provisions of this part owning or controlling other property for the establishment and administration of blind vendor operations.

History: En. Sec. 9, Ch. 175, L. 1981.

18-5-413. Implementation of Randolph-Sheppard Act, as amended. (1) The department may enter into agreements with the federal government as provided for in the Randolph-Sheppard Act, as amended, for administering the Randolph-Sheppard Act for all state or federal purposes.

(2) The department may adopt rules to implement agreements with the federal government entered into under the Randolph-Sheppard Act, as amended.

History: En. Sec. 10, Ch. 175, L. 1981.

18-5-414. Authority to adopt rules. The department may adopt such rules as are necessary to effectuate this part.

History: En. Sec. 11, Ch. 175, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

18-5-415. Operation of facilities. (1) The department is not subject to any requirements for competitive bidding on state leases or services to the state on vending facilities that are to be made available to certified blind persons or when purchasing initial supplies for the purpose of assisting a blind vendor.

(2) The department may temporarily operate a vending facility administered by the department if there is no certified blind person qualified to operate that facility.

(3) Neither a blind vendor nor the department is required to pay for rent, utilities, janitorial services in accessible public areas, or building maintenance costs for the space occupied by a vending facility on state property. The department may charge a use fee in lieu of rental, on a basis to be determined by the department, in the case of any blind vendor operating

a vending facility on state property whose net income for at least 10 of the preceding 12 months has exceeded twice the poverty level income for a nonfarm family of four as determined by the federal government.

(4) The department may purchase, sell, lease, maintain, and manage as necessary the equipment, stocks, and supplies required for the operation of those vending facilities administered as provided for in this part.

(5) The department shall, by rule, provide for appropriate allocation between the department and the blind vendors of liability for the operation of vending facilities operated pursuant to this part.

(6) After consultation with departments that are served by vending facilities subject to this part, the department may take action as necessary to assure the quality of services being provided by blind vendors.

History: En. Secs. 5, 7, Ch. 175, L. 1981.

18-5-416. Vending machines. The department may, except on state property, directly or through contractual arrangements, operate a facility consisting solely of vending machines if it has determined that operation by a blind vendor would be inappropriate. The department shall not directly operate vending machines on any state property where the department does not directly operate vending machines on October 1, 1981, unless, after competitive bid, the department is unable to obtain a suitable private contractor to operate vending machines on the state property. The department shall not, except through competitive bid, authorize a blind vendor to operate on state property a vending facility which consists solely or primarily of vending machines and which does not require the active presence of a vendor during its hours of operation.

History: En. Sec. 5, Ch. 175, L. 1981.

Part 5
Blind Person Preference

Part Compiler's Comments

Applicability: Section 3, Ch. 36, Sp. L. June 1986, provided: "A contract for the operation of a vending facility entered into prior to July 1, 1986, is not subject to this part while the contract remains in effect. In addition, this part may not be interpreted to require or authorize the failure to renew any contract for a vending facility on state property in effect on July 1, 1986, if the contract contains a provision permitting the renewal of the contract for a specific term at the option of the vendor or the state or both."

Part Cross-References

Vending facilities, Title 18, ch. 5, part 4.

18-5-501. Definitions. For purposes of this part, the following definitions apply:

(1) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision in the better eye to such a degree that the widest diameter of the visual field subtends an angle no greater than 20 degrees as determined by an ophthalmologist or a physician skilled in diseases of the eye.

(2) "Department" means the department of administration.

(3) "Purchasing agency" means any state agency authorized by Title 18, chapter 4, to enter into contracts.

(4) "Responsible bidder" means a person who has the capability in all respects to fully perform the requirements of a contract and has the integrity and reliability that assure good faith performance.

(5) (a) "State property" means a building or portion of a building or other real property that is:

(i) owned or leased by the state or an agency of the state;

(ii) utilized in the conduct of state matters; and

(iii) occupied principally by state employees.

(b) State property does not include vocational institutions or institutions of higher education.

(6) "Vending facility" means the area and equipment, including vending machines, on state property which are utilized in providing a food or beverage service to employees and other persons present on the property.

(7) "Vending machine" means a device for the dispensing of foodstuffs, liquids, or other products when money is inserted into the device. Vending machine does not include a postage stamp machine, photocopy machine, or coin-operated telephone.

History: En. Sec. 1, Ch. 36, Sp. L. June 1986.

18-5-502. Preference to blind persons. (1) Whenever state property is proposed to be made available to private persons for use as a vending facility, if two or more substantially equal proposals submitted by responsible bidders are determined to most closely meet the purchasing agency's specifications and if one of the proposals has been submitted by a blind person, the contract must be awarded to the blind person.

(2) For purposes of this section, proposals are substantially equal if their overall ratings, as determined by the purchasing agency in accordance with the request for proposal, do not differ by more than 3%.

(3) Any contract awarded pursuant to this section to a blind person must prohibit transfer of the contract by sublease, assignment, or any other method.

History: En. Sec. 2, Ch. 36, Sp. L. June 1986.

18-5-503. Application of state procurement law. Procurement under this part is subject to all other statutes governing state procurement except that in case of conflict the provisions of this part apply.

History: En. Sec. 4, Ch. 36, Sp. L. June 1986.

Cross-References

Procurement generally, Title 18, ch. 4.

18-5-504. Blind preference rules. The department shall adopt rules to implement this part.

History: En. Sec. 5, Ch. 36, Sp. L. June 1986.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 6

Nonvisual Access Technology Procurement

Part Compiler's Comments

Effective Date: Section 7, Ch. 429, L. 2001, provided that this part is effective July 1, 2001.

18-5-601. Findings — policy. (1) The legislature finds that:

(a) the advent of the information age throughout the United States and around the world has resulted in lasting changes in information technology;

(b) the use of interactive visual display terminals by the state is becoming a widespread means of access for public employees and the public to obtain information available electronically, but nonvisual access, whether by speech, Braille, or other appropriate means, has not been systematically incorporated into the procurement process for new information technology;

(c) presentation of electronic data solely in a visual format is a barrier to access by individuals who are blind or visually impaired, preventing them from participating on equal terms in crucial areas of life, such as education and employment;

(d) alternatives, including both software and hardware adaptations, have been created so that interactive control of computers and the use of the information presented are possible by both visual and nonvisual means;

(e) the goals of the state in obtaining and deploying new forms of technology properly include universal access so that segments of society with particular needs, including individuals who are unable to use visual displays, will not be left out of the information age; and

(f) although access to programs, technology, and information is provided for under other state and federal law and, in many instances, compels the installation and availability of nonvisual technology adaptations, access to information technology is most effectively accomplished at the point of procurement, ensuring that funds are expended on information technology designed to be readily adaptable for nonvisual access.

(2) It is the policy of this state that all state programs and activities be conducted in accordance with the following principles:

(a) Individuals who are blind or visually impaired have the right to full participation in the life of the state, including the use of information technology that is provided by the state for use by employees, program participants, and the public.

(b) Technology purchased in whole or in part with funds provided by the state that is to be used for the creation, storage, retrieval, or dissemination of information and that is intended for use by employees, program participants, and the public must be accessible to and usable by individuals who are blind or visually impaired.

History: En. Sec. 1, Ch. 429, L. 2001.

18-5-602. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Access" means the ability to receive, use, and manipulate data and operate controls included in information technology.

(2) "Blind or visually impaired" means an individual who has:

(a) a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision so that the widest diameter of the visual field subtends an angle no greater than 20 degrees;

(b) a medically indicated expectation of visual deterioration; or

(c) a medically diagnosed limitation in visual functioning that restricts the individual's ability to read and write standard print at levels expected of individuals of comparable ability.

(3) "Information technology" means all electronic information processing hardware and software, including telecommunications.

(4) "Nonvisual" means synthesized speech, Braille, and other output methods not requiring sight.

(5) "Readily adaptable" means that all critical components of information may be rendered by the information technology in equivalent nonvisual formats and that the installation or operation of software or hardware adaptations for speech, Braille, or other nonvisual formats do not require extraordinary alterations to the information technology.

(6) "State agency" means a department, board, commission, office, bureau, institution, university system entity, or unit of state government recognized in the state budget.

(7) "Telecommunications" means the transmission of information, images, pictures, voice, or data by radio, video, or other electronic or impulse means.

(8) "Undue burden" means compliance may be accomplished only by incurring an undue financial or administrative burden or by fundamentally altering a program or activity.

History: En. Sec. 2, Ch. 429, L. 2001.

18-5-603. Nonvisual access ensured. When information technology equipment and software are procured for use by employees, program participants, or members of the public, the state agency head shall ensure that the equipment or software:

(1) provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired;

(2) is designed to present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; and

(3) has been purchased under a contract that includes the technology access clause required by 18-5-604.

History: En. Sec. 3, Ch. 429, L. 2001.

18-5-604. Procurement requirements. (1) The technology access clause, referred to in 18-5-603(3), must be developed by the department of administration and must require compliance with nonvisual access standards developed by the state. The access clause and the nondiscrimination language required in 49-3-207 must be inserted in all contracts for the procurement of information technology by, or for the use of, state agencies.

(2) The nonvisual access standards developed pursuant to subsection (1) must include specifications that are necessary to fulfill the assurances contained in 18-5-603 and must include the following minimum specifications:

(a) Effective, interactive control and use of the technology, including the operating system, applications programs, and format of the data presented, are readily adaptable to nonvisual means.

(b) The technology equipped for nonvisual access must be compatible with information technology used by other individuals with whom the blind or visually impaired individual may interact or exchange electronic information.

(c) Nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public.

(d) The technology for nonvisual access must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

History: En. Sec. 4, Ch. 429, L. 2001.

18-5-605. Implementation. (1) For the purposes of ensuring the effective phasing in of nonvisual access technology procurement, the head of any state agency may not approve exclusion of the technology access clause required by 18-5-604 from any contract with respect to the compatibility of standard operating systems and software with nonvisual access software and peripheral devices or with respect to the initial design, development, and installation of information systems, including the design and procurement of interactive equipment and software.

(2) This section does not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

(3) Notwithstanding subsection (2), the applications programs and underlying operating systems, including the format of the data, used for the manipulation and presentation of information must permit the installation and effective use of nonvisual access software and peripheral devices.

(4) Compliance with this part with regard to information technology purchased prior to July 1, 2001, must be achieved at the time of procurement of an upgrade or replacement of existing equipment or software.

(5) Until July 1, 2003, a state agency may be exempted from the requirements of 18-5-604 if the cost would cause the state agency's budget to exceed legislative appropriations.

(6) A state agency may be exempted from the provisions of this part if the state agency makes a good faith determination that compliance would result in an undue burden.

History: En. Sec. 5, Ch. 429, L. 2001.

CHAPTER 6

SALES

Part 1 — Sale of State Property

18-6-101. Power to sell state property — proceeds credited to general fund.
18-6-102. Interagency transfers.
18-6-103. Highway equipment by bid.

Chapter Cross-References

Contract for sale, Title 30, ch. 11, part 1.
Seller's rights and obligations, Title 30, ch. 11, part 2.
Sale of state lands, Title 77, ch. 2, part 3.

Part 1
Sale of State Property

18-6-101. Power to sell state property — proceeds credited to general fund. (1) The department has exclusive power, subject to the approval of the governor, to sell or otherwise dispose of or to authorize the sale or other disposition of all materials and supplies, service equipment, or other personal property of any kind owned by the state but not needed or used by any state institution or by any department of state government. Upon request, the department shall authorize a state department or entity to donate property to a school district for classroom use pursuant to procedures implemented by the office of public instruction to ensure adequate notice of the availability of surplus state property and equal access and fair distribution of the property to school districts.

(2) Unless otherwise provided by law, the department shall credit the general fund with all money received.

(3) Whenever the personal property was accounted for in an enterprise or internal service fund or designated subfund account, the proceeds of the sale must be credited to the appropriate enterprise or internal service fund or designated subfund account.

History: En. Sec. 4, Ch. 66, L. 1923; re-en. Sec. 293.4, R.C.M. 1935; amd. Sec. 74, Ch. 199, L. 1965; amd. Sec. 1, Ch. 11, L. 1971; amd. Sec. 68, Ch. 326, L. 1974; R.C.M. 1947, 82-1914(part); amd. Sec. 4, Ch. 58, L. 1979; amd. Sec. 1, Ch. 346, L. 1981; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 2, Ch. 234, L. 1991; amd. Sec. 3, Ch. 441, L. 1999.

Cross-References

Rights to property, 2-15-132.
Inventory — property to be charged to receiving agency, 2-17-202.
Fund structure, 17-2-102.

18-6-102. Interagency transfers. If a state institution or agency needs and requests the materials, etc., to be disposed of, that institution or agency, upon the approval of the governor, may receive the materials, etc., requested.

History: En. Sec. 4, Ch. 66, L. 1923; re-en. Sec. 293.4, R.C.M. 1935; amd. Sec. 74, Ch. 199, L. 1965; amd. Sec. 1, Ch. 11, L. 1971; amd. Sec. 68, Ch. 326, L. 1974; R.C.M. 1947, 82-1914(part).

Cross-References

Rights to property, 2-15-132.
Inventory — property to be charged to receiving agency, 2-17-202.
Authority of Department of Justice to dispose of equipment, 44-1-106.

18-6-103. Highway equipment by bid. All sales of highway equipment shall be by public auction or sealed bids, and all proceeds received by the department from the sale of all material, supplies, equipment, and all other personal property of the department of transportation shall be placed in the highway account of the state special revenue fund or in the appropriate enterprise or internal service fund account.

History: En. Sec. 4, Ch. 66, L. 1923; re-en. Sec. 293.4, R.C.M. 1935; amd. Sec. 74, Ch. 199, L. 1965; amd. Sec. 1, Ch. 11, L. 1971; amd. Sec. 68, Ch. 326, L. 1974; R.C.M. 1947, 82-1914(2); amd. Sec. 1, Ch. 35, L. 1981; amd. Secs. 1, 3, Ch. 277, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Rights to property, 2-15-132.
Inventory — property to be charged to receiving agency, 2-17-202.
Department of Transportation — sale of personal property and printed matter, 60-4-206.

CHAPTER 7

PRINTING AND LEGAL NOTICES

Part 1 — State Printing

18-7-101. Power to contract for printing — exception.
18-7-102. Repealed.
18-7-103. Repealed.
18-7-104. Union label.
18-7-105. Penalty.
18-7-106. Approval of purchase orders.
18-7-107. State printing, binding, and stationery work.

18-7-108 through 18-7-110 reserved.
18-7-111. Repealed.
18-7-112. Repealed.
18-7-113. Repealed.

Part 2 — Publication of Legal Notices

18-7-201. Requirements for choice of newspaper — price.
18-7-202. Lower rates permissible.
18-7-203. Folio measurement.
18-7-204. Affidavit of printer — allowance of claims.
18-7-205. Penalty for false affidavit or overcharge.

Part 3 — Control of State Printing

18-7-301. Short title.
18-7-302. Definitions.
18-7-303. Duties of committee.
18-7-304. Department to prepare standards.
18-7-305. Printed matter prohibitions.
18-7-306. Public disclosure of costs.
18-7-307. Estimation of costs.

Chapter Cross-References

County printing contracts, 7-5-2411.
Printing of voter information pamphlets, 13-27-410.
Failure to make timely payment — interest assessed on amounts due, 17-8-242.
Gifts to public servants having discretionary function in contract letting, 45-7-104.

Part 1
State Printing

Part Cross-References

Printing defined, 1-1-203.
Publication of MCA, 1-11-301.
Publication and arrangement of Administrative Rules of Montana, 2-4-311.
Printing of Supreme Court decisions, 3-2-603.
Printing of Session Laws, 5-11-202.

18-7-101. Power to contract for printing — exception. (1) Except as provided in 1-11-301, the department has exclusive power, subject to the approval of the governor, to contract for all printing for any purpose used by the state in any state office (elective or appointive), agency, or institution.

(2) The department shall supervise and attend to all public printing of the state as provided in this chapter and shall prevent duplication and unnecessary printing.

(3) Unless otherwise provided by law, the department, in letting contracts as provided in this chapter, for the printing, binding, and publishing of all laws, journals, and reports of the state agencies and institutions may determine the quantity, quality, style, and grade of all such printing, binding, and publishing.

(4) The provisions of this chapter do not apply to the state compensation insurance fund for purposes of external marketing or educational materials.

History: En. Sec. 6, Ch. 66, L. 1923; re-en. Sec. 293.6, R.C.M. 1935; amd. Sec. 7, Ch. 80, L. 1961; amd. Sec. 9, Ch. 261, L. 1967; amd. Sec. 43, Ch. 93, L. 1969; amd. Sec. 71, Ch. 326, L. 1974; R.C.M. 1947, 82-1916; amd. Sec. 5, Ch. 58, L. 1979; amd. Sec. 1, Ch. 265, L. 1979; amd. Sec. 1, Ch. 209, L. 1989; amd. Sec. 6, Ch. 314, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 314 inserted (4) relating to certain state compensation insurance fund materials. Amendment effective April 21, 2001.

Cross-References

Publishing Policy Committee, 2-15-1017.
Board of County Printing — composition — allocation — compensation, 2-15-1026.
State library, Title 22, ch. 1, part 2.

18-7-102. Repealed. Sec. 53, Ch. 519, L. 1983.

History: En. Sec. 1, Ch. 153, L. 1935; re-en. Sec. 283.1, R.C.M. 1935; R.C.M. 1947, 82-1157; amd. Sec. 6, Ch. 58, L. 1979; amd. Sec. 2, Ch. 265, L. 1979.

18-7-103. Repealed. Sec. 53, Ch. 519, L. 1983.

History: En. Sec. 1, p. 58, L. 1897; re-en. Sec. 254, Rev. C. 1907; re-en. Sec. 260, R.C.M. 1921; re-en. Sec. 260, R.C.M. 1935; amd. Sec. 1, Ch. 242, L. 1963; R.C.M. 1947, 82-1137(part); amd. Sec. 3, Ch. 265, L. 1979.

18-7-104. Union label. All printing for which the state of Montana is chargeable shall bear the label of the branch of the international typographical union, the allied printing trades council, or the amalgamated lithographers of America of the locality in which it is printed, except under the following conditions. Printing firms not having the use of the labels and who are desirous of presenting bids for printing as enumerated above shall be required to establish consideration as a responsible bidder as follows:

(1) As a condition to consideration as a responsible bidder, printing concerns must file with the secretary of state a sworn statement to the effect that employees in the employ of the concern which is to produce such printing are receiving the prevailing wage rate and are working under conditions prevalent in the locality in which the work is produced.

(2) Whenever a collective bargaining agreement is in effect between an employer and employees who are represented by a responsible organization which is in no way influenced or controlled by the management, such agreement and its provisions shall be construed as conditions prevalent in said locality and shall be the minimum requirement for being adjudged a responsible bidder under this section, 18-7-107, or chapter 4 of this title.

(3) Printing firms having the use of the union labels as set forth above shall be deemed as having complied with the provisions of this section, 18-7-107, or chapter 4 of this title, but nothing in these provisions shall be construed as exempting such bidders from any provisions of this section, 18-7-107, or chapter 4 of this title, and such bidders shall also be required to conform to all provisions thereof.

History: En. Sec. 1, p. 58, L. 1897; re-en. Sec. 254, Rev. C. 1907; re-en. Sec. 260, R.C.M. 1921; re-en. Sec. 260, R.C.M. 1935; amd. Sec. 1, Ch. 242, L. 1963; R.C.M. 1947, 82-1137(part); amd. Sec. 48, Ch. 519, L. 1983.

Cross-References

Wages and wage protection, Title 39, ch. 3.

General limitations on collective bargaining rights, Title 39, ch. 33.

18-7-105. Penalty. Any officer of the state who shall accept any printed matter for which the state is chargeable in whole or in part or who is found to have had printed matter produced, under conditions other than as set forth in chapter 4 of this title, 18-7-104, or 18-7-107 shall be subject to a fine of $50 for each and every offense.

History: En. Sec. 1, p. 58, L. 1897; re-en. Sec. 255, Rev. C. 1907; re-en. Sec. 261, R.C.M. 1921; re-en. Sec. 261, R.C.M. 1935; amd. Sec. 2, Ch. 242, L. 1963; R.C.M. 1947, 82-1138; amd. Sec. 49, Ch. 519, L. 1983.

18-7-106. Approval of purchase orders. The department may not approve a claim for printing submitted by a state officer, agency, or institution unless:

(1) a purchase order has been prepared and approved by the department prior to ordering the printing; or

(2) written approval has been given by the department to order the printing without preparation of a purchase order.

History: En. Sec. 10, Ch. 197, L. 1921; re-en. Sec. 293, R.C.M. 1921; re-en. Sec. 293, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1969; Sec. 82-1910, R.C.M. 1947; amd. and redes. 82-1916.1 by Sec. 65, Ch. 326, L. 1974; R.C.M. 1947, 82-1916.1.

Cross-References

Reappropriation of encumbered obligations at end of each fiscal year, 17-7-303.

Expenditure procedures — quarterly allotment system, 17-8-102.

18-7-107. State printing, binding, and stationery work. All printing, binding, and stationery work for the state of Montana is subject to the preference in 18-1-102(1)(b). Federal exemptions as specified in 18-1-102(2)(b) apply.

History: En. Sec. 46, Ch. 519, L. 1983; amd. Sec. 1, Ch. 95, L. 1987; amd. Sec. 1, Ch. 53, L. 1991; amd. Sec. 24, Ch. 181, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 181 in first sentence after "Montana" substituted "is subject to the preference in 18-1-102(1)(b)" for "must be printed in the state of Montana by the lowest responsible bidder if the bid, including the cost of delivery, does not exceed the lowest bid by a nonresident printer by more than 8%. If there is no responsible in-state bidder, the work may be performed by the lowest responsible bidder outside the state." Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

Cross-References

State printing, 18-4-221.

18-7-108 through 18-7-110 reserved.

18-7-111. Repealed. Sec. 53, Ch. 519, L. 1983.

History: En. Sec. 1, Ch. 178, L. 1921; re-en. Sec. 281, R.C.M. 1921; re-en. Sec. 281, R.C.M. 1935; R.C.M. 1947, 82-1154.

18-7-112. Repealed. Sec. 53, Ch. 519, L. 1983.

History: En. Sec. 2, Ch. 178, L. 1921; re-en. Sec. 282, R.C.M. 1921; re-en. Sec. 282, R.C.M. 1935; R.C.M. 1947, 82-1155.

18-7-113. Repealed. Sec. 53, Ch. 519, L. 1983.

History: En. Sec. 3, Ch. 178, L. 1921; re-en. Sec. 283, R.C.M. 1921; re-en. Sec. 283, R.C.M. 1935; R.C.M. 1947, 82-1156.

Part 2
Publication of Legal Notices

Part Cross-References

County printing, Title 7, ch. 5, part 24.

18-7-201. Requirements for choice of newspaper — price. (1) In all cases and instances where any publication is required by law or is duly authorized to be made, executed, or accomplished by, for, or on behalf of the state of Montana or any of the institutions of said state or any of the departments, boards, bureaus, or commissions thereof or any of the officers, agents, or employees of the state when acting within the scope of their lawful authority and for the benefit of the state of Montana, the same shall be published in a newspaper printed and published in the state of Montana and of general bona fide and paid circulation with second-class mailing privilege and having been printed and published continuously in the state of Montana for at least 12 months immediately preceding such publication.

(2) The price for such publication and by whomsoever accomplished shall not exceed the minimum going rate charged any other advertiser for the same publication set in the same sized type and published for the same number of insertions.

History: En. Sec. 1, Ch. 157, L. 1921; re-en. Sec. 276, R.C.M. 1921; re-en. Sec. 276, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1951; amd. Sec. 1, Ch. 307, L. 1969; amd. Sec. 1, Ch. 385, L. 1973; R.C.M. 1947, 82-1149.

Cross-References

Publication of audits, 2-7-521.
Publication of notice to be once a week, 25-3-502, 25-3-503.
Effect of service by publication upon unknown persons, 25-3-505.
Notice of sale on execution, 25-13-701.
Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

18-7-202. Lower rates permissible. The prices, rates, and standards herein fixed and prescribed are in each instance and for every case covered by this part the maximum prices, rates, and standards. Their prescription and establishment herein shall in no case be taken as prohibiting a lesser or lower rate or price than herein fixed. Every department, institution, officer, or agent of the state shall, whenever possible, obtain a lower rate or price than is fixed herein, the equivalent of the minimum rate mentioned in 18-7-204.

History: En. Sec. 3, Ch. 157, L. 1921; re-en. Sec. 278, R.C.M. 1921; re-en. Sec. 278, R.C.M. 1935; R.C.M. 1947, 82-1151.

18-7-203. Folio measurement. (1) The following is the basis of measurement for the computation of folios in the various sizes of type, when set in a column 13 ems pica wide, and constitutes a folio within the meaning of this part:

(a) 12 lines of 6-point type;
(b) 14 lines of 7-point type;
(c) 16 lines of 8-point type;
(d) 18 lines of 9-point type; or
(e) 20 lines of 10-point type.

(2) A carefully verified actual count shall be made of the folio.

History: En. Sec. 2, Ch. 157, L. 1921; re-en. Sec. 277, R.C.M. 1921; re-en. Sec. 277, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1977; R.C.M. 1947, 82-1150.

Cross-References

Folio defined, 1-1-203.

18-7-204. Affidavit of printer — allowance of claims. No claim against the state for legal advertising or any of the publications covered by this part shall be allowed unless there is attached to said claim the certification of the publisher or printer (in the case of corporations or quasi-corporations by the business or advertising manager thereof) properly executed, setting forth that the price or rate charged the state of Montana for the publication for which claim is made is not in excess of the minimum rate charged any other advertiser for publication or advertisement set in the same sized type and published for the same number of insertions. It is hereby declared to be unlawful to make any claim against or to charge or attempt to charge the state of Montana for any publication in excess of the minimum going rate charged any other advertiser for the same publication set in the same sized type and published for the same number of insertions.

History: En. Sec. 4, Ch. 157, L. 1921; re-en. Sec. 279, R.C.M. 1921; re-en. Sec. 279, R.C.M. 1935; amd. Sec. 9, Ch. 97, L. 1961; R.C.M. 1947, 82-1152.

Cross-References

Affidavit of printer or publisher as evidence of publication, 26-1-1011.
Affidavit of publication — where filed — prima facie evidence, 26-1-1012.

18-7-205. Penalty for false affidavit or overcharge. Any person or any corporation or any firm or any quasi-corporation who shall violate any provision of this part or swear falsely hereunder or charge or attempt to charge the state of Montana in excess of the prices and rates herein fixed or in any manner circumvent or attempt to circumvent this part or aid or abet any other person, firm, corporation, or quasi-corporation in offense against this part shall be guilty of a misdemeanor and shall on conviction for the first offense be fined not more than $100 or be imprisoned in the county jail for not more than 3 months or both such fine and imprisonment, in the discretion of the court, and shall on conviction for each subsequent offense be fined not more than $300 or be imprisoned in the county jail for not more than 6 months or both such fine and imprisonment in the discretion of the court.

History: En. Sec, 5, Ch. 157, L. 1921; re-en. Sec. 280, R.C.M. 1921; re-en. Sec. 280, R.C.M. 1935; R.C.M. 1947, 82-1153.

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
False swearing, 45-7-202.

Part 3
Control of State Printing

Part Cross-References

Publishing Policy Committee, 2-15-1017.

18-7-301. Short title. This part may be cited as the “State Printing Control Act”.

History: En. Sec. 1, Ch. 646, L. 1979.

18-7-302. Definitions. As used in this part, the following definitions apply:

(1) The term “agency” as used herein includes each state office, department, board, commission, council, committee, unit of the university system, or other entity or instrumentality of the executive branch, office of the legislative branch, or office of the judicial branch of state government.

(2) The term “committee” means the publishing policy committee created in 2-15-1017.

(3) The term “department” as used herein means the department of administration provided for in Title 2, chapter 15, part 10.

(4) The term “public document” includes any publication of a state agency meant for dissemination to the public, but does not include educational materials published by a unit of the university system or the superintendent of public instruction, reports of the legislative auditor, travel promotion materials, standard forms, bid specifications, opinions of the

attorney general, opinions of the supreme court, session laws, the Administrative Rules of Montana, Montana Code Annotated, regular periodical publications sold to the general public solely through subscription and newsstand sale, or a publication specifically exempted by the publishing policy committee when inclusion of that publication under this part is not considered in the best interests of the state.

History: En. Sec. 2, Ch. 646, L. 1979.

Cross-References

Public records, Title 2, ch. 6.

18-7-303. Duties of committee. The committee shall:

(1) adopt standards for the efficient and economical publication of public documents;

(2) review proposals for publishing of all public documents prior to publication to determine:

(a) that the publication is necessary; and

(b) that the publication meets the standards of efficient and economical publication; and

(3) at its discretion, prepare a report for submission to the legislature, detailing the savings to state government resulting from this part.

History: En. Sec. 3, Ch. 646, L. 1979; amd. Sec. 24, Ch. 112, L. 1991; amd. Sec. 24, Ch. 349, L. 1993.

18-7-304. Department to prepare standards. The department may prepare recommended standards for state printing of public documents.

History: En. Sec. 4, Ch. 646, L. 1979.

18-7-305. Printed matter prohibitions. No agency of state government may use public funds to print or cause to be printed any public document except with approval of the committee.

History: En. Sec. 5, Ch. 646, L. 1979.

Cross-References

Power to contract for printing, 18-7-101.

18-7-306. Public disclosure of costs. All public documents caused to be printed by any agency of state government shall contain the following statement, with required information inserted, to be printed on the exterior cover of the publication: "... copies of this public document were published at an estimated cost of $... per copy, for a total cost of $..., which includes $... for printing and $... for distribution." This statement shall be printed in the same size type as the body copy of the document and shall be set in a box composed of a 1-point rule. If the committee determines that the cost of publication cannot be reasonably estimated at the time of publication, the publications shall contain the following statement on the exterior cover in lieu of the statement concerning estimated cost: "This document printed at state expense. Information on the cost of publication can be obtained by writing department of administration, Helena, Montana."

History: En. Sec. 6, Ch. 646, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

18-7-307. Estimation of costs. The following factors shall be utilized in estimating cost data:

(1) printing, including all expenditures for production, whether on bid or in-house; and

(2) circulation, including all expenditures for postage and for salaries of agency or department personnel involved in distribution of the public document.

History: En. Sec. 7, Ch. 646, L. 1979.

CHAPTER 8

PROCUREMENT OF SERVICES

Part 1 — Consultants
(Repealed. Sec. 21, Ch. 443, L. 1997)

Part 2 — Architectural, Engineering,
and Land Surveying Services

18-8-201. Statement of policy.
18-8-202. Definitions.
18-8-203. Public notice of agency requirements.
18-8-204. Procedures for selection.
18-8-205. Negotiation of contract for services.
18-8-206 through 18-8-210 reserved.
18-8-211. Coordination with other statutes.
18-8-212. Exception.

Part 1
Consultants
(Repealed. Sec. 21, Ch. 443, L. 1997)

Part Compiler's Comments

Histories of Repealed Sections:

18-8-101. En. Sec. 1, Ch. 547, L. 1981.
18-8-102. En. Sec. 2, Ch. 547, L. 1981.
18-8-103. En. Sec. 3, Ch. 547, L. 1981; amd. Sec. 1, Ch. 215, L. 1983; amd. Sec. 1, Ch. 231, L. 1985; amd. Sec. 2, Ch. 548, L. 1989; amd. Sec. 2, Ch. 630, L. 1993; amd. Sec. 3, Ch. 359, L. 1995.
18-8-104. En. Sec. 4, Ch. 547, L. 1981.
18-8-105. En. Sec. 6, Ch. 547, L. 1981; amd. Sec. 1, Ch. 509, L. 1983.
18-8-106. En. Sec. 7, Ch. 547, L. 1981.
18-8-107 through 18-8-110 reserved.
18-8-111. En. Sec. 5, Ch. 547, L. 1981.
18-8-112. En. Sec. 8, Ch. 547, L. 1981.

Part 2
Architectural, Engineering, and Land Surveying Services

Part Cross-References

Policy regarding practice of architecture — construction contracts, 18-2-111 through 18-2-114.

18-8-201. Statement of policy. The legislature hereby establishes a state policy that governmental agencies publicly announce requirements for architectural, engineering, and land surveying services and negotiate contracts for such professional services on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable prices.

History: En. Sec. 1, Ch. 51, L. 1987.

18-8-202. Definitions. Unless the context clearly indicates otherwise, in this part, the following definitions apply:

(1) "Agency" means a state agency, local agency, or special district.

(2) "Architectural, engineering, and land surveying" means services rendered by a person, other than as an employee of an agency, contracting to perform activities within the scope of the general definition of professional practice and licensed for the respective practice as an architect pursuant to Title 37, chapter 65, or an engineer or land surveyor pursuant to Title 37, chapter 67.

(3) "Licensed professional" or "licensed architect, professional engineer, professional land surveyor" means a person providing professional services who is not an employee of the agency for which the services are provided.

(4) "Local agency" means a city, town, county, special district, municipal corporation, agency, port district or authority, airport authority, political subdivision of any type, or any other entity or authority of local government, in corporate form or otherwise.

(5) "Person" means an individual, organization, group, association, partnership, firm, joint venture, or corporation.

(6) "Special district" means a unit of local government, other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, including but not limited to water districts, irrigation districts, fire districts, school districts, community college districts, hospital districts, sewer districts, and transportation districts.

(7) "State agency" means a department, agency, commission, bureau, office, or other entity or authority of state government.

History: En. Sec. 2, Ch. 51, L. 1987; amd. Sec. 49, Ch. 51, L. 1999.

18-8-203. Public notice of agency requirements. Each agency shall publish in advance its requirement for professional services. The announcement must state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of the agency who can provide further details. An agency may comply with this section by:

(1) publishing an announcement on each occasion when professional services provided by a licensed professional are required by the agency; or

(2) announcing generally to the public its projected requirement for any category or type of professional services.

History: En. Sec. 3, Ch. 51, L. 1987.

18-8-204. Procedures for selection. (1) In the procurement of architectural, engineering, and land surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) (a) The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project.

(b) The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as they relate to each firm:

(i) the qualifications of professional personnel to be assigned to the project;
(ii) capability to meet time and project budget requirements;
(iii) location;
(iv) present and projected workloads;
(v) related experience on similar projects; and
(vi) recent and current work for the agency.

(c) The agency shall follow the minimum criteria of this part if no other agency procedures are specifically adopted.

History: En. Sec. 4, Ch. 51, L. 1987.

18-8-205. Negotiation of contract for services. (1) The agency shall negotiate a contract with the most qualified firm for architectural, engineering, and land surveying services at a price which the agency determines to be fair and reasonable. In making its determination, the agency shall take into account the estimated value of the services to be rendered, as well as the scope, complexity, and professional nature thereof.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm must be formally terminated and the agency shall select other firms in accordance with 18-8-204 and continue as directed in this section until an agreement is reached or the process is terminated.

History: En. Sec. 5, Ch. 51, L. 1987.

18-8-206 through 18-8-210 reserved.

18-8-211. Coordination with other statutes. (1) This part need not be complied with by an agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved. This part does not relieve the contracting authority from complying with applicable law limiting emergency expenditures.

(2) The limitation on the preparation of working drawings contained in 18-2-111 applies to this part.

(3) The procedure for appointment of architects and consulting engineers pursuant to 18-2-112 applies to this part, except that the agency shall select its proposed list of three architects or consulting engineers in accordance with this part prior to submission to the department of administration.

History: En. Sec. 6, Ch. 51, L. 1987; amd. Sec. 19, Ch. 443, L. 1997.

18-8-212. Exception. (1) All agencies securing architectural, engineering, and land surveying services for projects for which the fees are estimated not to exceed $10,000 may contract for those professional services by direct negotiation.

(2) No agency may separate service contracts or split or break projects for the purpose of circumventing the provisions of this part.

History: En. Sec. 7, Ch. 51, L. 1987; amd. Sec. 3, Ch. 22, L. 1993; amd. Sec. 7, Ch. 518, L. 1993.

CHAPTERS 9 AND 10

RESERVED

CHAPTER 11

STATE-TRIBAL COOPERATIVE AGREEMENTS

Part 1 — General Provisions

18-11-101. Short title — purpose.
18-11-102. Definitions.
18-11-103. Authorization to enter agreement — general contents.
18-11-104. Detailed contents of agreement.
18-11-105. Submission of agreement to attorney general.
18-11-106. Repealed.
18-11-107. Filing of agreement.
18-11-108. Revocation of agreement.
18-11-109. Authorization to appropriate funds for purpose of agreement.
18-11-110. Specific limitations on agreements.
18-11-111. Repealed.
18-11-112. Revenue account — administrative account — distribution of revenue.

Chapter Cross-References

Jurisdiction on Indian lands, Title 2, ch. 1, part 3.

Part 1
General Provisions

18-11-101. Short title — purpose. (1) This chapter shall be known and may be cited as the "State-Tribal Cooperative Agreements Act".

(2) It is the intent of the legislature that this part be used to promote cooperation between the state or a public agency and a sovereign tribal government in mutually beneficial activities and services.

(3) It is the goal of the legislature to prevent the possibility of dual taxation by governments while promoting state, local, and tribal economic development.

History: En. Sec. 1, Ch. 309, L. 1981; (2), (3)En. Sec. 1, Ch. 625, L. 1993.

18-11-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Public agency" means any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana.

(2) "Tribal government" means the officially recognized government of any Indian tribe, nation, or other organized group or community located in Montana exercising self-government powers and recognized as eligible for services provided by the United States to Indians because of their status as Indians.

History: En. Sec. 2, Ch. 309, L. 1981.

18-11-103. Authorization to enter agreement — general contents. (1) Any one or more public agencies may enter into an agreement with any one or more tribal governments to:

(a) perform any administrative service, activity, or undertaking that a public agency or a tribal government entering into the contract is authorized by law to perform; and

(b) assess and collect or refund any tax or license or permit fee lawfully imposed by the state or a public agency and a tribal government and to share or refund the revenue from the assessment and collection.

(2) The agreement must be authorized and approved by the governing body of each party to the agreement. If a state agency is a party to an agreement, the governor or the governor's designee is the governing body.

(3) The agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.

(4) (a) Prior to entering into an agreement on taxation with a tribal government, a public agency shall provide public notice and hold a public meeting on the reservation whose government is a party to the proposed agreement for the purpose of receiving comments from and providing written and other information to interested persons with respect to the proposed agreement.

(b) At least 14 days but not more than 30 days prior to the date scheduled for the public meeting, a notice of the proposed agreement and public meeting must be published in a newspaper of general circulation in the county or counties in which the reservation is located.

(c) At the time the notice of the meeting is published, a synopsis of the proposed agreement must be made available to interested persons.

History: En. Sec. 3, Ch. 309, L. 1981; amd. Sec. 2, Ch. 625, L. 1993.

18-11-104. Detailed contents of agreement. (1) The agreement authorized by 18-11-103 must specify the following:

(a) its duration;

(b) the precise organization, composition, and nature of any separate legal entity created by the agreement;

(c) the purpose of the agreement;

(d) the manner of financing the agreement and establishing and maintaining a budget for the agreement;

(e) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon partial or complete termination;

(f) provision for administering the agreement, which may include creation of a joint board responsible for administration;

(g) the manner of acquiring, holding, and disposing of real and personal property used in the agreement; and

(h) other necessary and proper matters.

(2) If an agreement involves law enforcement, it must also include:

(a) the minimum training standards and qualifications of law enforcement personnel;

(b) the respective liability of each public agency and tribal government for the actions of law enforcement officers when acting under the provisions of an agreement;

(c) the minimum insurance required of both the public agency and the tribal government; and

(d) the exact chain of command to be followed by law enforcement officers acting under the provisions of an agreement.

(3) If an agreement involves the assessment and collection or refund of a similar tax or license or permit fee by the state or a public agency and a tribal government, it must also include:

(a) the procedure for determining the amount of revenue to be shared by the state or a public agency and the tribal government;

(b) the administrative procedures for collection of the shared revenue;

(c) the minimum insurance or bonding, if any, required by the state or a public agency or the tribal government;

(d) a statement specifying the administrative expenses, if any, to be deducted pursuant to 18-11-112 by the collector of the tax or license or permit fee;

(e) a statement that the state or a public agency or the tribal government collecting the tax or license or permit fee is subject to an audit report by a mutually agreed upon auditor of the revenue collected and administrative expenses;

(f) a statement that the state or a public agency and the tribal government will cooperate to collect only one tax and will share or refund the revenue as specified in the agreement;

(g) a statement that a taxpayer may not be required to pay both the state tax and the tribal tax but shall pay only one tax to one government in an amount established in the agreement; and

(h) a statement that the parties to the agreement are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as specifically set forth in the agreement.

History: En. Sec. 4, Ch. 309, L. 1981; amd. Sec. 3, Ch. 625, L. 1993.

18-11-105. Submission of agreement to attorney general. (1) As a condition precedent to an agreement made under this chapter becoming effective, it must have the approval of the attorney general of Montana.

(2) The attorney general shall approve an agreement submitted to him under this chapter unless he finds it is not in proper form or does not meet the requirements set forth in this chapter or otherwise does not conform to the laws of Montana. If he disapproves an agreement, he shall provide a detailed, written statement to the governing bodies of the public agency and tribal government concerned, specifying the reasons for his disapproval.

(3) If the attorney general does not disapprove the agreement within 30 days after its submission to him, it shall be considered approved by him.

History: En. Sec. 5, Ch. 309, L. 1981.

18-11-106. Repealed. Sec. 2, Ch. 38, L. 1985.

History: En. Sec. 6, Ch. 309, L. 1981.

18-11-107. Filing of agreement. (1) Within 60 days after approval by the attorney general and signature of the parties, an agreement made pursuant to this chapter must be filed with:

(a) the regional office of the bureau of Indian affairs of the United States department of the interior having trust responsibility for the tribe that is party to the agreement or its successor agency;

(b) each county clerk and recorder of each county where the principal office of one of the parties to the agreement is located, except as provided in (2) of this section;

(c) the secretary of state; and

(d) the affected tribal government.

(2) If a party to the agreement is a state agency, the agreement need not be filed with the county clerk and recorder for Lewis and Clark County.

History: En. Sec. 7, Ch. 309, L. 1981; amd. Sec. 1, Ch. 38, L. 1985; amd. Sec. 1, Ch. 54, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 54 in (1) at beginning substituted "60 days" for "10 days"; and in (1)(a) at beginning substituted "regional office" for "area office". Amendment effective March 16, 2001.

Effective Date — Applicability: Section 4, Ch. 54, L. 2001, provided: "[This act] is effective on passage and approval [approved March 16, 2001] and applies to agreements entered into on or after [the effective date of this act]."

18-11-108. Revocation of agreement. An agreement made pursuant to this chapter is subject to revocation by any party upon 6 months' notice to the other unless a different notice period of time is provided for within the agreement. No agreement may provide for a notice period for revocation in excess of 5 years.

History: En. Sec. 8, Ch. 309, L. 1981.

18-11-109. Authorization to appropriate funds for purpose of agreement. Any public agency entering into an agreement pursuant to this chapter may appropriate funds for and may sell, lease, or otherwise give or supply material to any entity created for the purpose of performance of the agreement and may provide such personnel or services therefor as is within its legal power to furnish.

History: En. Sec. 9, Ch. 309, L. 1981.

Cross-References

Statutory appropriations, Title 17, ch. 7, part 5.

18-11-110. Specific limitations on agreements. Nothing in this chapter may be construed to authorize an agreement that:

(1) is not permitted by federal law. However, the parties are encouraged to deal with substantive matters and enforcement matters that can be mutually agreed upon, but no such agreement may be considered to affect the underlying jurisdictional authority of any party unless expressly authorized by congress.

(2) authorizes a public agency or tribal government, either separately or pursuant to agreement, to expand or diminish the jurisdiction presently exercised by the government of the United States to make criminal laws for or enforce criminal laws in Indian country; or

(3) authorizes a public agency or tribal government to enter into an agreement except as authorized by their own organizational documents or enabling laws.

History: En. Sec. 10, Ch. 309, L. 1981; amd. Sec. 1, Ch. 81, L. 1985.

18-11-111. Repealed. Sec. 2, Ch. 54, L. 2001.

History: En. Sec. 11, Ch. 309, L. 1981.

18-11-112. Revenue account — administrative account — distribution of revenue. (1) The revenue collected by the state, a public agency, or a tribal government under a state-tribal cooperative agreement and the administrative expenses, if any, deducted under subsection (2) from the total revenue collected must be deposited in separate special revenue accounts.

(2) Administrative expenses deducted by the state, a public agency, or a tribal government for collection of revenue may not exceed the actual cost of collecting the revenue on a reservation or 5%, whichever is less. Money from an administrative account may be expended only for the purpose of administering the tax or fee imposed under the state-tribal cooperative agreement or for paying the costs incurred in terminating the agreement.

(3) Except for administrative expenses, if any, deducted under subsection (2), revenue collected by a public agency under a state-tribal agreement must be deposited in separate special revenue accounts and must be disbursed as provided for in the agreement. If a public agency that is a party to an agreement is a local government, the agreement must provide for the disposition of revenue.

(4) Money deposited in a state administrative expenses account and in a state special revenue account is statutorily appropriated, as provided in 17-7-502, to the department or public agency that is a party to a state-tribal cooperative agreement under 18-11-103, for the purpose of paying administrative expenses or paying to a tribe its portion of the tax or fee.

(5) If a tax or license or permit fee is collected or refunded pursuant to a state-tribal cooperative agreement, each party must receive its share as provided in the agreement, notwithstanding any contrary state statutory, public agency ordinance, or tribal ordinance distribution formula. For distribution of the remainder, the state statutory, public agency, or tribal distribution formula must apply as if the amount remaining after each party to the agreement receives its share were the total revenue collected from the tax or license or permit fee.

History: En. Sec. 4, Ch. 625, L. 1993.

TITLE 19

PUBLIC RETIREMENT SYSTEMS

Ch.
1. Social Security.
2. Public Employees' Retirement Act — General Provisions.
3. Public Employees' Retirement System.
4. Teachers' Retirement. Renumbered by Code Commissioner, 1993.
5. Judges' Retirement.
6. Highway Patrol Officers' Retirement.
7. Sheriffs' Retirement.
8. Game Wardens' and Peace Officers' Retirement.
9. Police Retirement — Statewide Plan.
10. Police Retirement — Local Funds. Renumbered by Code Commissioner, 1993.
11. Firefighters' Retirement. Renumbered by Code Commissioner, 1993.
12. Volunteer Firefighters' Compensation Act. Renumbered by Code Commissioner, 1993.
13. Firefighters' Unified Retirement System.
Chapter 14 reserved.
15. Retirement Adjustment. Repealed. Sec. 74, Ch. 18, L. 1995.
Chapter 16 reserved.
17. Volunteer Firefighters' Compensation Act.
18. Firefighters' Retirement.
19. Police Retirement — Local Funds.
20. Teachers' Retirement.
21. University System Optional Retirement Program.
Chapters 22 through 49 reserved.
50. Deferred Compensation.

CHAPTER 1

SOCIAL SECURITY

Part 1 — General Provisions

19-1-101. Declaration of policy.
19-1-102. Definitions.
19-1-103. Exclusions.
19-1-104. Retirement systems to be considered separate.

Part 2 — Administration

19-1-201. State agency to make rules.
19-1-202. Costs of administration.

Part 3 — Referendum and Certification

19-1-301. Authorization of referendum by governor.
19-1-302. Conduct of referendum.
19-1-303. Notice of referendum.
19-1-304. Certification by governor.

Part 4 — Federal-State Agreement

19-1-401. Authority for federal-state agreement.
19-1-402. Contents of federal-state agreement.

Part 5 — Plans for Employees of Political Subdivisions

19-1-501. Submission of plan.
19-1-502. Approval of plan by state agency.
19-1-503. Required provisions of plan.

Part 6 — Contribution Account

19-1-601. Establishment of contribution account.
19-1-602. Management of account.
19-1-603. Limit on use of account.
19-1-604. Payments from account.

Part 7 — Payments into Contribution Account

19-1-701. Sources of funds in account.
19-1-702. Contributions by state employees.
19-1-703. Budgeting by state departments.
19-1-704. Contribution by political subdivision.
19-1-705. Deduction of employee contribution by political subdivision.
19-1-706. Collection of delinquent payments from political subdivision.

Part 8 — Participation of Teachers

19-1-801. Purpose — general repeal.
19-1-802. No effect on rights under other laws.
19-1-803 through 19-1-810 reserved.
19-1-811. Referendum by school district.
19-1-812. Eligibility of staff and teachers.
19-1-813. Collection of contributions.
19-1-814. District's contribution to be first obligation.
19-1-815. Merger of reporting entities.
19-1-816 through 19-1-820 reserved.
19-1-821. Retirement system to be considered separate for each institution.
19-1-822. Referendum — institution of higher education.
19-1-823. Certification by governor.
19-1-824. Federal-state agreement.
19-1-825. Collection of contributions.
19-1-826. Changes in federal law.

Chapter Cross-References

Department of Public Health and Human Services authorized to supplement Social Security, 52-1-104.

Department of Public Health and Human Services' administration of vendor payment program of medical assistance under Social Security, Title 53, ch. 6, part 1.

Part 1
General Provisions

19-1-101. Declaration of policy. In order to extend to employees of the state and its political subdivisions, including employees of the state and its political subdivisions who are members of the public employees' retirement system of the state of Montana, and to the dependents and survivors of such employees the basic protection accorded to others by the old age and survivors' insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the legislature, subject to the limitations of this chapter, that such steps be taken as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the Social Security Act. It is also the policy of the legislature that the protection afforded employees in positions covered by the public employees' retirement system of the state of Montana on the date an agreement under this chapter is made applicable to service performed in such positions or receiving periodic benefits under such retirement system at such time will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

History: En. Sec. 1, Ch. 44, L. 1953; amd. Sec. 1, Ch. 270, L. 1955; R.C.M. 1947, 59-1101.

Cross-References

Public employees' retirement system, Title 19, ch. 3.

19-1-102. Definitions. For the purposes of this chapter, the following definitions apply:

(1) The term "employee" includes an elective or appointive officer or employee of the state or a political subdivision of the state.

(2) (a) The term "employment" means any service performed by an employee in the employ of the state or any political subdivision of the state for the employer, except:

(i) service that in the absence of an agreement entered into under this chapter would constitute "employment" as defined in the Social Security Act; or

(ii) service that under the Social Security Act may not be included in an agreement between the state and the secretary of health and human services entered into under this chapter.

(b) Service performed by civilian employees of national guard units is specifically included within the term "employment".

(c) Service that under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act is included in the term "employment" if and when the governor issues, with respect to the service, a certificate to the secretary of health and human services pursuant to 19-1-304.

(3) The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the federal Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the federal Internal Revenue Code of 1954, as the codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of the Code of 1939 and section 3101 of the Code of 1954 and as the codes may from time to time be amended.

(4) The term "political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations, but only if the instrumentality is a juristic entity that is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to the juristic entity employees of the state or subdivision. The term includes special districts or authorities created by the legislature or local governments, such as but not limited to school districts and housing authorities.

(5) The term "secretary of health and human services" means the secretary of the United States department of health and human services; includes any individual to whom the secretary of health and human services has delegated any functions under the Social Security Act with respect to coverage under that act of employees of states and their political subdivisions; and, with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom the administrator had delegated any function.

(6) The term "Social Security Act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act", including regulations and requirements issued pursuant to the act, as the act has been and may be amended.

(7) The term "state agency" means the department of administration provided for in 2-15-1001.

(8) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include that part of remuneration that, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act.

History: En. Sec. 2, Ch. 44, L. 1953; amd. Sec. 2, Ch. 270, L. 1955; amd. Sec. 1, Ch. 64, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 59-1102; amd. Sec. 32, Ch. 10, L. 1993; amd. Sec. 1, Ch. 58, L. 1999.

Cross-References

Public Employees' Retirement Board, 2-15-1009.
Local Government, Title 7.
Wages defined, 39-3-201.

19-1-103. Exclusions. This chapter shall not apply to and there shall be excluded from the operation thereof all employees of the state and of the political subdivisions thereof operating under the provisions of any retirement plan for firefighters.

History: En. Sec. 8, Ch. 44, L. 1953; amd. and redes. as Sec. 10, Ch. 44, L. 1953 by Sec. 10, Ch. 270, L. 1955; amd. Sec. 3, Ch. 97, L. 1959; amd. Sec. 1, Ch. 122, L. 1974; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 59-1108.

Cross-References

Local government — fire protection, Title 7, ch. 33.
Firefighters' unified retirement, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.

19-1-104. Retirement systems to be considered separate. (1) Pursuant to section 218(d)(6) of the Social Security Act (42 U.S.C. 418(d)(6)), the public employees' retirement system of the state of Montana is, for the purposes of this chapter, considered a separate retirement system with respect to the state and a separate retirement system with respect to each political subdivision having positions covered by the system.

(2) Pursuant to section 218(l)(1) of the Social Security Act (42 U.S.C. 418(l)(1)), the Montana judges' retirement system, the sheriffs' retirement system, the Montana state game wardens' and peace officers' retirement system, the highway patrol officers' retirement system of the state of Montana, the public employees' retirement system of the state of Montana, and each municipal police retirement fund and each city participating in the municipal police officers' retirement system are, for the purposes of this chapter, considered separate retirement systems with respect to the state and separate retirement systems with respect to each political subdivision having positions covered by those systems.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(1); amd. Sec. 2, Ch. 114, L. 1979; amd. Sec. 1, Ch. 264, L. 1981; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 101, Ch. 42, L. 1997; amd. Sec. 12, Ch. 223, L. 1997.

Cross-References

Retirement system to be considered separate for each institution of higher education, 19-1-821.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Police retirement — local funds, Title 19, ch. 19.

Part 2
Administration

19-1-201. State agency to make rules. The state agency shall make and publish such rules, not inconsistent with the provisions of this chapter, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this chapter.

History: En. Sec. 7, Ch. 44, L. 1953; amd. and redes. as Sec. 9, Ch. 44, L. 1953 by Sec. 9, Ch. 270, L. 1955; R.C.M. 1947, 59-1107.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Public Employees' Retirement Board, 2-15-1009.
State agency defined, 19-1-102.

19-1-202. Costs of administration. All costs allocable to the administration of this chapter must be charged to the state agency.

History: En. Sec. 6, Ch. 44, L. 1953; amd. and redes. as Sec. 8, Ch. 44, L. 1953 by Sec. 8, Ch. 270, L. 1955; amd. Sec. 5, Ch. 248, L. 1965; amd. Sec. 2, Ch. 109, L. 1967; amd. Sec. 5, Ch. 64, L. 1977; R.C.M. 1947, 59-1106; amd. Sec. 1, Ch. 282, L. 1983; amd. Sec. 3, Ch. 412, L. 1995; amd. Sec. 2, Ch. 58, L. 1999.

Cross-References

Fund structure, 17-2-102.

Part 3
Referendum and Certification

Part Cross-References

Local government — initiative and referendum, Art. XI, sec. 8, Mont. Const.
Local government — initiatives and referendums, Title 7, ch. 5, part 1.
Municipal ordinances and resolutions, Title 7, ch. 5, part 42.

19-1-301. Authorization of referendum by governor. With respect to members of the public employees', highway patrol officers', judges', and game wardens' and peace officers' retirement systems, the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision, he shall authorize a referendum upon the request of the governing body of the subdivision.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(2); amd. Sec. 2, Ch. 264, L. 1981; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 12, Ch. 223, L. 1997.

Cross-References

Local government — initiative and referendum, Art. XI, sec. 8, Mont. Const.
Local government — initiatives and referendums, Title 7, ch. 5, part 1.
Referendum by school district, 19-1-811.
Referendum — institution of higher education, 19-1-822.

PERS — membership, 19-3-401.
Judges' retirement — membership, 19-5-301.
Highway patrol retirement — membership, 19-6-301.
Game wardens' and peace officers' retirement — membership, 19-8-301.

19-1-302. Conduct of referendum. In either case, the referendum shall be conducted and the governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the Social Security Act (42 U.S.C. 418(d)(3)), on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under this chapter.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(3).

Cross-References

Local government — referendum — submission of questions to electors, 7-5-136.

19-1-303. Notice of referendum. The notice of referendum required by section 218(d)(3)(C) of the Social Security Act (42 U.S.C. 418(d)(3)(C)) to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum considers necessary and sufficient, informing the employees of the rights which will accrue to them and their dependents and survivors and the liabilities to which they will be subject if their services are included under an agreement under this chapter.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(4).

Cross-References

Local government — procedure to exercise right of initiative or referendum, 7-5-132.

19-1-304. Certification by governor. Upon receiving satisfactory evidence that with respect to a referendum the conditions specified in section 218(d)(3) of the Social Security Act (42 U.S.C. 418(d)(3)) have been met, the governor shall certify the results of the referendum to the secretary of health and human services.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(5); amd. Sec. 33, Ch. 10, L. 1993.

Cross-References

Teachers' retirement — certification by Governor, 19-1-823.

Part 4
Federal-State Agreement

Part Cross-References

Federal assistance management, Title 17, ch. 3, part 1.

19-1-401. Authority for federal-state agreement. The state agency, with the approval of the governor, may enter, on behalf of the state, into an agreement with the secretary of health and human services, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old age and survivors' insurance system to employees of the state or any political subdivision of the state with respect to services specified in the agreement that constitute "employment", as defined in 19-1-102.

History: En. Sec. 3, Ch. 44, L. 1953; amd. and redes. as Sec. 4, Ch. 44, L. 1953 by Sec. 4, Ch. 270, L. 1955; amd. Sec. 1, Ch. 97, L. 1959; R.C.M. 1947, 59-1103(part); amd. Sec. 34, Ch. 10, L. 1993.

Cross-References

Declaration of policy, 19-1-101.

19-1-402. Contents of federal-state agreement. The agreement authorized by 19-1-401 may contain provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and secretary of health and human services shall agree upon, but, except as may be otherwise required or permitted by or under the Social Security Act as to the services to be covered, the agreement must provide in effect that:

(1) benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though the services constituted employment within the meaning of Title II of the Social Security Act;

(2) the state will pay to the secretary of the treasury of the United States, at a time or times as may be prescribed under the Social Security Act, contributions with respect to wages equal to the sum of the taxes that would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act;

(3) the agreement must be effective with respect to services in employment covered by the agreement performed after a date specified in the agreement, but may not be effective with respect to services performed prior to the first day of the calendar year in which the agreement is entered into or in which the modification of the agreement making it applicable to services is entered into, except that the effective date may be made retroactive to the extent permitted by section 218(e) of the Social Security Act (42 U.S.C. 418(e));

(4) all services that constitute employment and are performed in the employ of the state by employees of the state must be covered by the agreement; and

(5) all services that constitute employment, are performed in the employ of a political subdivision of the state, and are covered by a plan that is in conformity with the terms of the agreement and that has been approved by the state agency under part 5 must be covered by the agreement.

History: En. Sec. 3, Ch. 44, L. 1953; amd. and redes. as Sec. 4, Ch. 44, L. 1953 by Sec. 4, Ch. 270, L. 1955; amd. Sec. 1, Ch. 97, L. 1959; R.C.M. 1947, 59-1103(part); amd. Sec. 35, Ch. 10, L. 1993; amd. Sec. 102, Ch. 42, L. 1997.

Cross-References

Declaration of policy, 19-1-101.

Part 5
Plans for Employees of Political Subdivisions

Part Cross-References

Local Government, Title 7.

19-1-501. Submission of plan. Each political subdivision of the state shall submit for approval by the state agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivision.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(part).

Cross-References

Retirement systems to be considered separate, 19-1-104.

19-1-502. Approval of plan by state agency. (1) A plan and any amendment thereof shall be approved by the state agency if it finds that the plan or the plan as amended is in conformity with such requirements as are provided in regulations of the state agency.

(2) The state agency may not finally refuse to approve a plan submitted by a political subdivision under 19-1-501 and may not terminate an approved plan without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(part).

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

Rules — notice, hearing, and submission of views, 2-4-302.

Contested cases — notice, 2-4-601.

Contested cases — hearing, 2-4-612.

State agency to make rules, 19-1-201.

19-1-503. Required provisions of plan. A plan may not be approved unless:

(1) it is in conformity with the requirements of the Social Security Act and with the agreement entered into under 19-1-401 and 19-1-402;

(2) it provides that all services that constitute employment and that are performed in the employ of the political subdivisions by employees of the political subdivisions will be covered by the plan, except that it may exclude services performed by individuals to whom section 218 (c)(3)(B) of the Social Security Act (42 U.S.C. 418(c)(3)(B)) is applicable;

(3) it specifies the sources from which the funds necessary to make the payments required by 19-1-704 and 19-1-706 are expected to be derived and contains reasonable assurance that the sources will be adequate to make the payments;

(4) it provides for methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(5) it provides that the political subdivision will make reports, in a form and containing information, as the state agency may require and will comply with the provisions that the state agency or the secretary of health and human services finds necessary to ensure the correctness and verification of the reports;

(6) it authorizes the state agency, in its discretion, to terminate the plan in its entirety if it finds that there has been a failure to comply substantially with any provision contained in the plan. The termination is to take effect at the expiration of any notice and on conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(2); amd. Sec. 36, Ch. 10, L. 1993; amd. Sec. 103, Ch. 42, L. 1997.

Cross-References

Local government not to affect retirement rights established by state law — may establish additional systems, 7-1-111.

Part 6
Contribution Account

Part Cross-References

State finance — accounting, Title 17, ch. 2.

19-1-601. Establishment of contribution account. There is hereby established, in place of the fund known as the contribution fund, an agency account for the social security program in the agency fund to be known as the contribution account.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(1).

Cross-References

Fund structure — agency fund, 17-2-102.

19-1-602. Management of account. (1) All money in the account must be mingled and undivided.

(2) Subject to the provisions of this chapter, the state agency has full power, authority, and jurisdiction over the account, including all money and property or securities belonging to the account. The state agency may perform any acts, whether or not specifically designated, that are necessary to the administration of the account and that are consistent with the provisions of this chapter.

(3) The board of investments shall invest the account as part of the unified investment program described in Title 17, chapter 6, part 2. The state agency shall credit all interest and income earned on the account in excess of that which, in its judgment, may be needed for the purposes set forth in 19-1-603 to the state general fund.

(4) By the end of the fiscal year during which all payments determined to be due and payable from the state to the social security administration and the state agency's administrative expenses necessary to administer this chapter have been paid, the state agency shall transfer any funds remaining in the contribution account to the state general fund.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch.

64, L. 1977; R.C.M. 1947, 59-1105(3); amd. Sec. 3, Ch. 264, L. 1981; amd. Sec. 1, Ch. 4, Sp. L. June 1986; amd. Sec. 4, Ch. 412, L. 1995; amd. Sec. 3, Ch. 58, L. 1999.

Cross-References

Board of Investments, 2-15-1808.
Separate investment funds, 17-6-203.

19-1-603. Limit on use of account. The contribution account shall be used and administered exclusively for the purpose of this chapter. Subject to the provisions of 19-1-602, withdrawals from the account shall be made solely for payment of amounts required to be paid to the secretary of the treasury of the United States pursuant to an agreement entered into under 19-1-401 and 19-1-402, payment of refunds provided for in 19-1-702, and refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(4).

Cross-References

Separate investment funds, 17-6-203.

19-1-604. Payments from account. (1) From the contribution account the custodian of the account shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under 19-1-401, 19-1-402, and the Social Security Act.

(2) The treasurer of the state shall pay all warrants drawn upon the state agency in accordance with the provisions of this part and with such regulations as the state agency may prescribe pursuant thereto.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(5).

Cross-References

State Treasurer — duties generally, 17-1-111.

Part 7
Payments into Contribution Account

Part Cross-References

State finance — accounting, Title 17, ch. 2.

19-1-701. Sources of funds in account. The contribution account shall consist of and there shall be deposited in such account:

(1) all contributions, interest, and penalties collected under 19-1-702 and 19-1-704 through 19-1-706;

(2) all moneys appropriated thereto by the legislature of the state of Montana;

(3) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the account; and

(4) all other moneys received for the account from any other source.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(2).

Cross-References

State employer to include costs in budget, 19-3-317.

19-1-702. Contributions by state employees. (1) Every employee of the state whose services are covered by an agreement entered into under 19-1-401 and 19-1-402 shall be required to pay, for the period of such coverage, contributions with respect to wages (as defined in 19-1-102) equal to the amount of employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or his entry upon such service, after February 20, 1953.

(2) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments or refund if adjustment is impracticable shall be made, without interest, in such manner and at such times as the state agency shall prescribe.

History: En. as Sec. 5, Ch. 44, L. 1953 by Sec. 5, Ch. 270, L. 1955; amd. Sec. 198, Ch. 147, L. 1963; R.C.M. 1947, 59-1103.1.

Cross-References

Adjusted gross income, 15-30-111.
Employer to furnish itemized statement of deductions, 39-3-101.

19-1-703. Budgeting by state departments. Each department of the state shall include in its operating budget for the next succeeding fiscal year, prepared and delivered to the department of administration in accordance with the provisions of law, an estimate of the amount which it will be required to contribute to the contribution account.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(6).

Cross-References

Department of Administration, Title 2, ch. 15, part 10.
State employer to include costs in budget, 19-3-317.

19-1-704. Contribution by political subdivision. Each political subdivision as to which a plan has been approved under part 5 of this chapter shall pay, at such time or times as the state agency may prescribe by regulation, contributions with respect to wages (as defined in 19-1-102) in the amounts and at the rates specified in the applicable agreement entered into by the state agency under 19-1-401 and 19-1-402.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(4)(a).

Cross-References

State agency to make rules, 19-1-201.

19-1-705. Deduction of employee contribution by political subdivision. (1) Each political subdivision required to make payment under 19-1-704 shall, in consideration of the employee's retention in or entry upon employment after February 20, 1953, impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in 19-1-102), not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act and shall deduct the amount of such contributions from his wages as and when paid.

(2) Contributions so collected partially discharge the liability of the political subdivision or instrumentality under 19-1-704. Failure to deduct the contribution does not relieve the employee or employer of liability therefor.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(4)(b).

Cross-References

Required provisions of plan, 19-1-503.
Employer to furnish itemized statement of deductions, 39-3-101.

19-1-706. Collection of delinquent payments from political subdivision. (1) The purpose of this section is to encourage compliance with the federal deposit and reporting procedures, not to produce revenue. Therefore, the state agency may waive part or all of the interest penalty when, in the opinion of the board, a reasonable explanation has been submitted in writing by the political subdivision.

(2) Delinquent payments due under 19-1-704 may, with interest at the rate of 9% a year, or $10 per day, whichever is greater, be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor or may, at the request of the state agency, be

deducted from any other moneys payable to the subdivision by any department, agency, or fund of the state.

History: **En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(5); amd. Sec. 4, Ch. 264, L. 1981.**

Cross-References

Judiciary, Courts, Title 3.
Authority to collect debt — offsets, 17-4-105.
Legal interest, 31-1-106.

Part 8
Participation of Teachers

Part Cross-References

Teachers' retirement, Title 19, ch. 20.
Education — teachers, superintendents, and principals, Title 20, ch. 4.

19-1-801. Purpose — general repeal. All acts and parts of acts in conflict herewith are hereby repealed to the extent of any such conflict, it being the purpose of this part to bring under the provisions of parts 1 through 7 of this chapter or any act amendatory thereof teachers and staff members of districts and institutions of higher education for supplemental social security coverage as provided by the federal Social Security Act.

History: **En. Sec. 5, Ch. 271, L. 1955; R.C.M. 1947, 59-1113.**

Cross-References

Teachers' retirement, Title 19, ch. 20.

19-1-802. No effect on rights under other laws. Nothing in this part may be construed to prejudice or otherwise affect any rights, benefits, or privileges heretofore accrued under any other law of this state. It is the intent of this legislation to permit supplementation of present retirement benefits under existing law with social security benefits. It is also the intent to permit teachers and staff in any district or institution of higher education so electing to become members of more than one retirement system, to receive credit under more than one system for the same service, and to receive benefits from more than one system. No benefits received under either system may be deducted from any other or separate system.

History: **En. Sec. 4, Ch. 271, L. 1955; amd. Sec. 9, Ch. 64, L. 1977; R.C.M. 1947, 59-1112.**

Cross-References

Teachers' retirement, Title 19, ch. 20.

19-1-803 through 19-1-810 reserved.

19-1-811. Referendum by school district. A school district of the state may, upon the approval thereof being voted by the board of trustees, conduct and supervise a referendum, pursuant to section 218 of the federal Social Security Act (42 U.S.C. 418), among the members of the staff and teachers of the school or schools under the jurisdiction of the board of trustees. If the majority of votes cast in the referendum indicates that the staff and teachers approve, then the board of trustees shall certify to the department of administration that the conditions for coverage by social security, required by section 218 of the Social Security Act, have been complied with.

History: **En. Sec. 1, Ch. 271, L. 1955; amd. Sec. 20, Ch. 391, L. 1973; amd. Sec. 6, Ch. 64, L. 1977; R.C.M. 1947, 59-1109.**

Cross-References

Local government — initiative and referendum, Art. XI, sec. 8, Mont. Const.
Local government — initiatives and referendums, Title 7, ch. 5, part 1.
Social Security — referendum and certification, Title 19, ch. 1, part 3.
Approval of plan by state agency, 19-1-502.
School districts, Title 20, ch. 6.

19-1-812. Eligibility of staff and teachers. Upon the certification provided for in 19-1-811, the staff and teachers of the district are eligible for coverage under the provisions of the federal Social Security Act.

History: **En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(1).**

Cross-References
Declaration of policy, 19-1-101.

19-1-813. Collection of contributions. The fiscal officer of the district shall thereafter collect the contributions required under the federal Social Security Act, section 218 (42 U.S.C. 418), from the staff and teachers by payroll deduction and from the school district as employer. The funds collected shall be deposited with the department of administration and held in the contribution account as provided by parts 1 through 7 of this chapter.

History: En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(2).

Cross-References
Adjusted gross income, 15-30-111.
Fund structure, 17-2-102.
Employer to furnish itemized statement of deductions, 39-3-101.

19-1-814. District's contribution to be first obligation. For the purposes of this part, the contributions with respect to services equivalent to the employer's tax established by the federal Social Security Act are the first obligation against any state funds received for school support by any school district, high school district, or county high school and shall be paid therefrom before any other expenditure.

History: En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(3).

Cross-References
Collection of delinquent payments from political subdivisions, 19-1-706.
School districts, Title 20, ch. 6.

19-1-815. Merger of reporting entities. If the approval of referenda at different times results in the establishment of two separate social security reporting entities for a high school district and an elementary school district and the high school building is located in the elementary school district, the state agency shall, upon request of the boards of trustees in both districts, merge the two reporting entities to form a single reporting entity if the elementary school district and high school district:

(1) have boards of trustees of which a majority of each board is composed of the same persons;

(2) are administered by the same executive officer; and

(3) have payroll calculations made in the same payroll application.

History: En. Sec. 1, Ch. 350, L. 1983.

19-1-816 through 19-1-820 reserved.

19-1-821. Retirement system to be considered separate for each institution. For the purposes of this part, the teachers' retirement system of the state of Montana is considered a separate retirement system with respect to each state institution of higher education in Montana, and each institution and the teachers therein shall be treated separately and independently from the other institutions and teachers.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(1).

Cross-References
Retirement systems to be considered separate, 19-1-104.
Teachers' retirement, Title 19, ch. 20.

19-1-822. Referendum — institution of higher education. On request of the president of an institution, the governor shall designate an agency or individual to give notice of and supervise a referendum in the retirement system for that institution in compliance with the requirements prescribed by section 218 of the Social Security Act (42 U.S.C. 418).

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(2).

Cross-References
Local government — initiative and referendum, Art. XI, sec. 8, Mont. Const.
Local government — initiatives and referendums, Title 7, ch. 5, part 1.
PERS — authorization of referendum by Governor, 19-1-301.

19-1-823. Certification by governor. If the majority of votes cast in the referendum indicates that the majority of voters desire it, the governor shall certify to the secretary of health and human services that the conditions set forth in section 218 of the Social Security Act

(42 U.S.C. 418) have been complied with in respect to the retirement system voting in the referendum.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(3); amd. Sec. 37, Ch. 10, L. 1993.

Cross-References

Public retirement systems — certification by Governor, 19-1-304.

19-1-824. Federal-state agreement. Upon certification, the governor shall designate an official to enter into an agreement or a modification or supplement to an existing agreement or both a modification and a supplement with the appropriate officers of the federal government, pursuant to section 218 of the Social Security Act (42 U.S.C. 418), to secure coverage thereunder for the retirement system with respect to which certification has been made. An agreement may be made retroactive to the extent permissible under the Social Security Act.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(4).

Cross-References

Federal-state agreement, Title 19, ch. 1, part 4.

19-1-825. Collection of contributions. (1) The fiscal officer for an institution for whose retirement system an agreement has been made shall collect the contributions required by section 218, as follows:

(a) from the teachers in the retirement system of that institution, by payroll deductions; and

(b) from the state, from any appropriations to the institution involved for salaries or other purposes.

(2) In the absence of a specific provision in the appropriations for or budget of an institution for such contributions, the board of regents of higher education shall designate the funds from which the required contributions will be made and the budgetary items to which they will be allocated.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(5), (6).

Cross-References

Board of Regents of Higher Education, Art. X, sec. 9, Mont. Const.; 2-15-1505.
Adjusted gross income, 15-30-111.
Contribution by political subdivision, 19-1-704.
State employer to include costs in budget, 19-3-317.
Employer to furnish itemized statement of deductions, 39-3-101.

19-1-826. Changes in federal law. In the event that any relevant provisions of federal law are amended or superseded, then the provisions hereof which relate to such law shall be applied to the amended law or the superseding law.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(7).

Cross-References

State law — subsequent amendments, 1-2-108.
Contents of federal-state agreement, 19-1-402.

CHAPTER 2

PUBLIC EMPLOYEES' RETIREMENT ACT GENERAL PROVISIONS

Part 1 — General Provisions (Renumbered by Code Commissioner, 1993)

Part 2 — Administration (Renumbered and Repealed)

Part 3 — General Provisions

19-2-301. Short title.
19-2-302. Applicability.
19-2-303. Definitions.

Part 4 — Administration

19-2-401. Location of board — jurisdiction and venue for judicial review — quorum — officers and employees.
19-2-402. Compensation of board members.

19-2-403. Powers and duties of board.
19-2-404. Appointment and compensation of administrative staff.
19-2-405. Employment of actuary — biennial investigation and valuation.
19-2-406. Determination of disability by board — compliance with federal law — conversion to service retirement benefit — rules.
19-2-407. Report by board to governor.
19-2-408. Administrative expenses.
19-2-409. Systems to be funded on actuarially sound basis — definition.

Part 5 — Management and Investment of Pension Trust Funds

19-2-501. Pension trust funds established.
19-2-502. Payments from pension trust funds.
19-2-503. Management of pension trust funds.
19-2-504. Investment of pension trust funds.
19-2-505. Restrictions on use of funds.
19-2-506. Payment of contributions by employers — accompanying reports — penalty.
19-2-507. Transfer between funds.
19-2-508 through 19-2-510 reserved.
19-2-511. Limitation of liability.

Part 6 — Termination of Membership and Refunds

19-2-601. Termination of membership.
19-2-602. Refund of member's contributions on termination of service.
19-2-603. Reinstatement after withdrawal of contributions.

Part 7 — Service Credit and Additional Contributions

19-2-701. Service credit.
19-2-702. Membership service.
19-2-703. No duplication of benefits for same period of service.
19-2-704. Purchasing service credits allowed — payroll deduction.
19-2-705. Repealed.
19-2-706. Additional service for member involuntarily terminated from membership service.
19-2-707. Qualified military service.
19-2-708. Rollover of contributions.
19-2-709. Transfer of service and contributions from other Montana public employee retirement systems.
19-2-710. Nonapplication of part to defined contribution plan.

Part 8 — Beneficiaries

19-2-801. Designation of beneficiary.
19-2-802. Effect of no designation or no surviving designated beneficiary.
19-2-803. Payment to custodian of minor beneficiary.
19-2-804. Limitations on payment of benefits to person causing member's death or disability.

Part 9 — Management of Benefit Payments

19-2-901. Estimate of benefit when information incomplete.
19-2-902. Payment of benefits.
19-2-903. Adjustment of errors in payments.
19-2-904. Withholding of group insurance premium from retirement benefit.
19-2-905. Payments under workers' compensation.
19-2-906. Limitations on disability or survivorship benefits.
19-2-907. Alternate payees — family law orders — rulemaking.
19-2-908. Time of commencement of benefit — rulemaking.
19-2-909. Execution or withholding for support obligation — rulemaking.

Part 10 — Special Provisions

19-2-1001. Maximum contribution and benefit limitations.
19-2-1002. Vesting of retirement benefits upon termination of plan.
19-2-1003. Transfer of dormant, nonvested member-accumulated contributions.
19-2-1004. Exemption from taxes and legal process.
19-2-1005. Compensation limit.
19-2-1006. Use of forfeitures.
19-2-1007. Required distributions.
19-2-1008. Budget Act superseded.
19-2-1009. Penalty for fraud.
19-2-1010. Retaining qualified plan status — content of plan document — board rulemaking authority.
19-2-1011 through 19-2-1014 reserved.

19-2-1015. Probate and nonprobate transfer statutes superseded.

Part 11 — Postretirement Benefits and Benefit Increases (Repealed)

19-2-1101. Repealed.
19-2-1102. Repealed.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
Social Security, Title 19, ch. 1.
Limitations on payment of benefits if beneficiary causes member's death, 19-2-804.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement — general provisions, Title 19, ch. 5, part 1.
Highway patrol retirement — general provisions, Title 19, ch. 6, part 1.
Sheriffs' retirement — general provisions, Title 19, ch. 7, part 1.
Game wardens' and peace officers' retirement — general provisions, Title 19, ch. 8, part 1.
Police retirement — statewide plan — general provisions, Title 19, ch. 9, part 1.
Firefighters' unified retirement — general provisions, Title 19, ch. 13, part 1.
Volunteer Firefighters' Compensation Act — general provisions, Title 19, ch. 17, part 1.
Firefighters' retirement — general provisions, Title 19, ch. 18, part 1.
Police retirement — local funds — general provisions, Title 19, ch. 19, part 1.
Teachers' retirement — general provisions, Title 19, ch. 20, part 1.

Part 1
General Provisions
(Renumbered by Code Commissioner, 1993)

Part Compiler's Comments

Sections Renumbered:

19-2-101. Renumbered 19-50-101.
19-2-102. Renumbered 19-50-102.
19-2-103. Renumbered 19-50-103.

Part 2
Administration
(Renumbered and Repealed)

Part Compiler's Comments

Sections Renumbered and Repealed:

19-2-201. Renumbered 19-50-201 by Code Commissioner, 1993.
19-2-202. Renumbered 19-50-202 by Code Commissioner, 1993.
19-2-203. Renumbered 19-50-203 by Code Commissioner, 1993.
19-2-204. Renumbered 19-50-204 by Code Commissioner, 1993.
19-2-205. Repealed. Sec. 10, Ch. 472, L. 1981.
19-2-206. Renumbered 19-50-206 by Code Commissioner, 1993.

Histories of Repealed Sections:

19-2-205. En. 68-2708 by Sec. 8, Ch. 264, L. 1974; amd. Sec. 3, Ch. 60, L. 1977; R.C.M. 1947, 68-2708.

Part 3
General Provisions

19-2-301. Short title. This chapter may be cited as "The Public Employees' Retirement Act".

History: En. Sec. 1, Ch. 265, L. 1993.

19-2-302. Applicability. Except as otherwise provided in this title, this chapter applies to the provisions and administration of the retirement systems and plans within the systems under chapters 3, 5 through 9, and 13 of this title.

History: En. Sec. 2, Ch. 265, L. 1993; amd. Sec. 4, Ch. 471, L. 1999.

Compiler's Comments

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

19-2-303. *(Temporary)* **Definitions.** Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a system, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a retirement system over the present value of future normal costs in that retirement system.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member to purchase various types of optional service credit as allowed by the applicable retirement system.

(8) "Annuity" means equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement system and as such are not benefits paid by a retirement system and are not subject to periodic or one-time increases.

(9) "Benefit" means the service or disability retirement or survivorship benefit payment provided by a retirement system.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement system and that are used to calculate service or disability retirement or survivorship benefits under a retirement system.

(13) "Department" means the department of administration.

(14) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits or lump-sum payments upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(15) "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(16) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(17) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(18) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(19) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(20) "Inactive member" means a member who is not an active or retired member.

(21) “Internal Revenue Code” means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999.

(22) “Member” means any person with accumulated contributions and service credited with a retirement system or receiving a retirement benefit on account of the person’s previous service credited in a retirement system.

(23) “Membership service” means the periods of service that are used to determine eligibility for retirement or other benefits.

(24) “Normal cost” or “future normal cost” means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a retirement system during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement system.

(25) “Normal retirement age” means the age at which a member is eligible to immediately receive a retirement benefit based on the member’s age, length of service, or both, as specified under the member’s retirement system, without disability and without an actuarial or similar reduction in the benefit.

(26) “Pension” means benefit payments for life derived from contributions to a system made from state- or employer-controlled funds.

(27) “Pension trust fund” means a fund established to hold the contributions, income, and assets of a retirement system in public trust.

(28) “Regular contributions” means contributions required from members under a retirement system.

(29) “Regular interest” means interest at rates set from time to time by the board.

(30) “Retirement” or “retired” means the status of a member who has been terminated from service for at least 30 days and has received and accepted a retirement benefit from a retirement system.

(31) “Retirement benefit” means the periodic benefit payable as a result of service, early, or disability retirement under a retirement system. An annuity is not a retirement benefit.

(32) “Retirement plan” or “plan” means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(33) “Retirement system” or “system” means one of the public employee retirement systems enumerated in 19-2-302.

(34) “Service” means employment of an employee in a position covered by a retirement system.

(35) “Statutory beneficiary” means the surviving spouse or dependent child or children of a member of the highway patrol officers’, municipal police officers’, or firefighters’ unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(36) “Supplemental cost” means an element of the total actuarial cost of a retirement system arising from benefits payable for service performed prior to the inception of the retirement system or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement system.

(37) “Survivorship benefit” means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a retirement system.

(38) “Termination of employment” or “termination of service” means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

(39) “Unfunded actuarial liabilities” or “unfunded liabilities” means the excess of a retirement system’s actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(40) "Vested member" or "vested" means a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under a retirement system.

(41) "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary.

19-2-303. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Definitions.** Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Benefit" means:

(a) the service or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan[, including a disability payment under 19-3-2141,] for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Covered employment" means employment in a covered position.

(13) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(14) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate service or disability retirement or survivorship benefits under a defined benefit retirement plan.

(15) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(16) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(17) "Department" means the department of administration.

(18) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(19) "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(20) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(21) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(22) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(23) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(24) "Inactive member" means a member who is not an active or retired member.

(25) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999.

(26) "Member" means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

(27) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(28) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement plan.

(29) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

(30) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(31) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(32) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

(33) "Regular contributions" means contributions required from members under a retirement plan.

(34) "Regular interest" means interest at rates set from time to time by the board.

(35) "Retirement" or "retired" means the status of a member who has been terminated from service for at least 30 days and has received and accepted a retirement benefit from a retirement plan.

(36) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and employee contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(37) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service, early, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (9)(b).

(38) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(39) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(40) "Service" means employment of an employee in a position covered by a retirement system.

(41) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(42) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(43) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(44) "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

(45) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(46) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts: the member's contribution account, the vested portion of the employer's contribution account, and the member's account for other contributions.

(47) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under the retirement plan; or

(b) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

(48) "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required

information, including documentation that the board considers necessary. *(Bracketed language terminates on occurrence of contingency—sec. 16, Ch. 423, L. 2001.)*

History: En. 68-1503 by Sec. 4, Ch. 323, L. 1973; amd. Sec. 1, Ch. 190, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 8, Ch. 332, L. 1977; R.C.M. 1947, 68-1503; amd. Sec. 3, Ch. 114, L. 1979; amd. Sec. 1, Ch. 496, L. 1981; amd. Sec. 2, Ch. 282, L. 1983; amd. Sec. 1, Ch. 45, L. 1987; amd. Sec. 2, Ch. 71, L. 1989; amd. Sec. 3, Ch. 265, L. 1993; Sec. 19-3-104, MCA 1991; redes. 19-2-303 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 5, Ch. 412, L. 1995; amd. Sec. 5, Ch. 370, L. 1997; amd. Secs. 4, 46(1), Ch. 58, L. 1999; amd. Sec. 5, Ch. 471, L. 1999; amd. Secs. 4, 99(1)(b), Ch. 562, L. 1999; amd. Sec. 4, Ch. 99, L. 2001; amd. Sec. 1, Ch. 149, L. 2001; amd. Sec. 3, Ch. 423, L. 2001; amd. Sec. 1, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 99 in definition of employee at end inserted "or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105"; in definition of employer in first sentence after "governmental" substituted "agency" for "entity" and inserted second sentence including certain interlocal government entities in the definition; in definition of membership service at beginning deleted "or "years of service""; inserted definition of normal retirement age; in definition of written application at beginning inserted "or "written election"", after "instrument" substituted "prescribed" for "specified", after "by the board" inserted "or required by law", and after "properly" substituted "signed" for "executed"; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 149 in definition of actuarial equivalent substituted "the mortality table and interest rate assumptions adopted by the board" for "the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually". Amendment effective March 29, 2001.

Chapter 423 in version effective on occurrence of contingency or July 1, 2002, in definition of benefit in (b) inserted reference to a disability payment under 19-3-2141. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

(Temporary version) Chapter 490 inserted definition of retirement plan; and made minor changes in style. Amendment effective July 1, 2001.

(Version effective on occurrence of contingency or July 1, 2002, whichever is earlier) Deleted definition of account balance that read: ""Account balance" means all contributions, income, and other assets in a retirement account that have, pursuant to 19-3-2116, vested to a member of the defined contribution plan"; inserted definition of retirement plan; inserted definition of vested account; in definition of vested member in (b) after "member or status of a" substituted "member who meets the minimum membership service requirements of 19-3-2116" for "member who, pursuant to 19-3-2116, is entitled to employer contributions and income on those contributions in the member's retirement account"; and made minor changes in style.

Effective Date: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier."

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void."

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Part 4
Administration

Part Cross-References

Police retirement — statewide plan — extension of coverage by local government employers, Title 19, ch. 9, part 2.
Firefighters' unified retirement — extension of coverage by local government employers, Title 19, ch. 13, part 2.
Volunteer Firefighters' Compensation Act — administration of fund, Title 19, ch. 17, part 2.
Teachers' retirement — administration of system, Title 19, ch. 20, part 2.
Discrimination in insurance and retirement plans, 49-2-309.

19-2-401. Location of board — jurisdiction and venue for judicial review — quorum — officers and employees. (1) The board shall maintain its office in the city of Helena. Jurisdiction and venue for judicial review of final administrative decisions of the board are in the first judicial district, Lewis and Clark County, unless otherwise stipulated by the parties.

(2) A quorum of the board is four members.

(3) The board shall elect one of its members presiding officer. The board may appoint a committee of one or more of its members to perform routine acts, such as retirement of members and fixing of retirement benefits, approval of death claims, and correction of records necessary in the administration of the systems in accordance with the provisions of chapters 2, 3, 5 through 9, 13, 17, and 50 of this title and in accordance with the rules of the board. The attorney general is the legal counsel for the board.

History: En. 68-1801 by Sec. 18, Ch. 323, L. 1973; R.C.M. 1947, 68-1801; amd. Sec. 4, Ch. 265, L. 1993; Sec. 19-3-301, MCA 1991; redes. 19-2-401 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 6, Ch. 412, L. 1995; amd. Sec. 6, Ch. 471, L. 1999; amd. Sec. 2, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 490 in (3) in second sentence near end in list of chapters inserted 2 and 50; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.
Attorney General — duties generally, 2-15-501.
Department of Administration, Title 2, ch. 15, part 10.
Public Employees' Retirement Board, 2-15-1009.
Representation on Board of Investments, 2-15-1808.

19-2-402. Compensation of board members. Members shall be entitled to compensation as provided in 2-15-124.

History: En. 68-1802 by Sec. 19, Ch. 323, L. 1973; amd. Sec. 15, Ch. 453, L. 1977; R.C.M. 1947, 68-1802(part); amd. Sec. 2, Ch. 672, L. 1983; amd. Sec. 5, Ch. 650, L. 1985; Sec. 19-3-302, MCA 1991; redes. 19-2-402 by Sec. 238, Ch. 265, L. 1993.

19-2-403. Powers and duties of board. (1) The board shall administer the provisions of the chapters enumerated in 19-2-302.

(2) The board may establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established.

(3) The board shall establish uniform rules that are necessary to determine service credit for fractional years of service.

(4) The board shall determine who are employees within the meaning of each retirement system. The board is the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems.

(5) The board shall determine and may modify retirement benefits under the retirement systems. Benefits may be paid only if the board decides, in its discretion, that the applicant is, under the provisions of the appropriate retirement system, entitled to the benefits.

(6) In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

(7) The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

(8) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial rates and rates of regular interest it determines appropriate for the administration of the retirement systems.

(9) The board shall review the sufficiency of benefits paid by the retirement system or plan and recommend to the legislature those changes in benefits in a defined benefit plan or in contributions under the defined contribution plan that may be necessary for members and their beneficiaries to maintain a stable standard of living.

(10) The board may implement third-party mailings under the provisions of 2-6-109. If third-party mailings are implemented, the board shall adopt rules governing means of implementation, including the specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party mailings must be deposited in an account in the state special revenue fund and must be appropriated to the board for the benefit of participants of retirement systems or plans administered by the board.

(11) In discharging duties, the board, a member of the board, or an authorized representative of the board may conduct hearings, administer oaths and affirmations, take

depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

(12) The board may by rule or otherwise delegate to the board's executive director or any other staff member any of the powers or duties conferred by law upon the board except as otherwise provided by law and except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection (11) or the contested case procedure of the Montana Administrative Procedure Act.

(13) The board shall perform other duties and may exercise the powers concerning the defined contribution plan for plan members as provided in chapter 3, part 21, of this title.

History: En. 68-1803 by Sec. 20, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 9, Ch. 332, L. 1977; R.C.M. 1947, 68-1803(1); amd. Sec. 5, Ch. 265, L. 1993; amd. Sec. 1, Ch. 481, L. 1993; Sec. 19-3-304, MCA 1991; redes. 19-2-403 by Sec. 238, Ch. 265, L. 1993; (10)En. Sec. 2, Ch. 412, L. 1995; amd. Sec. 7, Ch. 471, L. 1999; amd. Sec. 5, Ch. 562, L. 1999; amd. Sec. 5, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (5) inserted second sentence allowing payment of benefits only if the board determines that an applicant is entitled to the benefits; and in (11) inserted second sentence regarding issuance and enforcement of subpoenas. Amendment effective March 21, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Use by Board of mailing lists of retirement system participants to send materials on behalf of third parties, 2-6-109.

Governmental code of fair practices, Title 49, ch. 3.

19-2-404. Appointment and compensation of administrative staff. The board shall hire and fix the compensation of an executive director and other necessary employees to assist the board in administering the retirement systems. The compensation of the executive director and employees must be established in accordance with Title 2, chapter 18.

History: En. Sec. 6, Ch. 265, L. 1993; amd. Sec. 17, Ch. 532, L. 1997; amd. Sec. 6, Ch. 562, L. 1999.

19-2-405. *(Temporary)* **Employment of actuary — biennial investigation and valuation.** (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary is the technical advisor of the board on matters regarding the operation of the retirement systems.

(2) The board shall require the actuary to make a biennial actuarial investigation into the suitability of the actuarial tables used by the retirement systems and an actuarial valuation of the assets and liabilities of the retirement systems.

(3) The normal cost contribution rate, which is funded by required employee contributions and a portion of the required employer contributions to the retirement system, must be calculated as that level percentage of members' salaries that will actuarially fund benefits payable under a retirement system as those benefits accrue in the future.

(4) The unfunded liability contribution rate, which is entirely funded by a portion of the required employer contributions to the retirement system, must be calculated as that level percentage of members' salaries that will amortize the unfunded actuarial liabilities of the retirement system over a reasonable period of time, not to exceed 30 years, as determined by the board.

(5) The board shall require the actuary to conduct a periodic actuarial investigation into the actuarial experience of the retirement systems.

19-2-405. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Employment of actuary — biennial investigation and valuation.** (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary is the technical advisor of the board on matters regarding the operation of the retirement systems.

(2) The board shall require the actuary to make a biennial actuarial investigation into the suitability of the actuarial tables used by the retirement systems and an actuarial valuation of the assets and liabilities of each defined benefit plan that is a part of the retirement systems.

(3) The normal cost contribution rate, which is funded by required employee contributions and a portion of the required employer contributions to each defined benefit retirement plan, must be calculated as the level percentage of members' salaries that will actuarially fund benefits payable under a retirement plan as those benefits accrue in the future.

(4) (a) The unfunded liability contribution rate, which is entirely funded by a portion of the required employer contributions to the retirement plan, must be calculated as the level percentage of current and future defined benefit plan members' salaries that will amortize the unfunded actuarial liabilities of the retirement plan over a reasonable period of time, not to exceed 30 years, as determined by the board.

(b) In determining the amortization period under subsection (4)(a) for the public employees' retirement system's defined benefit plan, the actuary shall take into account the plan choice rate contributions to be made to the defined benefit plan pursuant to 19-3-2117 and 19-21-203(5)(b).

(5) The board shall require the actuary to conduct a periodic actuarial investigation into the actuarial experience of the retirement systems and plans.

(6) The board may require the actuary to conduct any valuation necessary to administer the retirement systems and the plans subject to this chapter.

History: En. 68-1804 by Sec. 21, Ch. 323, L. 1973; R.C.M. 1947, 68-1804; amd. Sec. 7, Ch. 265, L. 1993; Sec. 19-3-305, MCA 1991; redes. 19-2-405 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 8, Ch. 471, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Cross-References

Valuations for police officers' retirement systems, 19-19-205.

Valuations for teachers' retirement system, 19-20-203.

19-2-406. *(Temporary)* **Determination of disability by board — compliance with federal law — conversion to service retirement benefit — rules.** (1) The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or any authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

(2) The board shall adopt rules requiring employers to identify and explain the essential elements of a member's position, any accommodations that were or can be made in compliance with the Americans With Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the effectiveness of the accommodations.

(3) The board shall retain medical personnel to advise it in assessing the nature and extent of disabling conditions while reviewing claims for disability retirement.

(4) The disability retirement benefit paid to a member must be converted to a service retirement benefit, without recalculation of the monthly benefit amount, when the member has attained normal retirement age. The board shall notify the member in writing as to the change in status.

19-2-406. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Determination of disability by board — compliance with federal law — conversion to service retirement benefit — rules.** (1) The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or any authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

(2) The board shall adopt rules requiring employers to identify and explain the essential elements of a member's position, any accommodations that were or can be made in compliance with the Americans With Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the effectiveness of the accommodations.

(3) The board shall retain medical personnel to advise it in assessing the nature and extent of disabling conditions while reviewing claims for disability retirement.

(4) The disability retirement benefit paid to a member of the defined benefit plan must be converted to a service retirement benefit, without recalculation of the monthly benefit amount, when the member has attained normal retirement age. The board shall notify the member in writing as to the change in status. *(Terminates on occurrence of contingency—sec. 16, Ch. 423, L. 2001.)*

19-2-406. *(Effective on occurrence of contingency)* **Determination of disability by board — compliance with federal law — conversion to service retirement benefit — rules.** (1) The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or any authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

(2) The board shall adopt rules requiring employers to identify and explain the essential elements of a member's position, any accommodations that were or can be made in compliance with the Americans With Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the effectiveness of the accommodations.

(3) The board shall retain medical personnel to advise it in assessing the nature and extent of disabling conditions while reviewing claims for disability retirement.

(4) The disability retirement benefit paid to a member of a defined benefit plan must be converted to a service retirement benefit, without recalculation of the monthly benefit amount, when the member has attained normal retirement age. The board shall notify the member in writing as to the change in status.

(5) This section does not apply to members of the defined contribution plan.

History: En. Sec. 1, Ch. 597, L. 1981; amd. Sec. 8, Ch. 265, L. 1993; Sec. 19-5-611, MCA 1991; redes. 19-2-406 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 7, Ch. 412, L. 1995; amd. Sec. 9, Ch. 471, L. 1999; amd. Sec. 7, Ch. 562, L. 1999; amd. Sec. 6, Ch. 99, L. 2001; amd. Sec. 4, Ch. 423, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: (Temporary version) Chapter 99 in (1) inserted third sentence regarding issuance and enforcement of subpoenas; and in first sentence of (4) substituted "normal retirement age" for "the minimum age required for normal service retirement". Amendment effective March 21, 2001.

(Version effective on occurrence of contingency or July 1, 2002, whichever is earlier) In (1) inserted third sentence regarding issuance and enforcement of subpoenas; and near beginning of first sentence of (4) after "to a member" inserted "of a defined benefit plan" and at end substituted "normal retirement age" for "the minimum age required for normal service retirement".

Chapter 423 in version effective on occurrence of contingency or July 1, 2002, in (4) after "member" inserted "of the defined benefit plan"; and deleted former (5) that read: "(5) This section does not apply to members of the defined contribution plan." Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Effective Date: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier."

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void."

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

19-2-407. *(Temporary)* **Report by board to governor.** As soon as practical after the close of each fiscal year, the board shall file with the governor a report of its work for that fiscal year. The report must include a statement as to the accumulated cash and securities in the pension trust funds as certified by the state treasurer and the board of investments. The report must also include the most recent unpublished report of the actuary of the actuarial valuation of the assets and liabilities of each system.

19-2-407. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Report by board to governor.** As soon as practical after the close of each fiscal year, the board shall file with the governor a report of its work for that fiscal year. The report must include a statement as to the accumulated cash and securities in the pension trust funds as certified by the state treasurer and the board of investments. The report must include the most recent unpublished report of the actuary of the actuarial valuation of the assets and liabilities of each system or plan. The report must also provide information concerning the defined contribution plan, including a description of the plan, the number of members in the plan, plan contribution rates, the total amount of money invested by members, investment performance, administrative costs and fees, determinations on the plan choice rate made pursuant to 19-3-2121, and other information required under applicable governmental accounting standards and as determined by the board.

History: En. 68-1803 by Sec. 20, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 9, Ch. 332, L. 1977; R.C.M. 1947, 68-1803(2); amd. Sec. 9, Ch. 265, L. 1993; Sec. 19-3-306, MCA 1991; redes. 19-2-407 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 10, Ch. 471, L. 1999; amd. Sec. 8, Ch. 562, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Cross-References

Department of Administration, 2-15-1001.
General fiscal duties of State Treasurer, 17-1-111.
Separate investment funds, 17-6-203.

19-2-408. Administrative expenses. (1) The legislature finds that proper administration of the pension trust funds benefits both employers and members and continues to benefit members after retirement.

(2) (a) The administrative expenses of the retirement systems administered by the board must be paid from the investment earnings on the pension trust fund of the public employees' retirement system's defined benefit plan, except as otherwise provided in this section. The board shall compute the administrative expenses attributable to each retirement system or plan administered by the board and transfer that amount from each retirement system's or plan's pension trust fund to the pension trust fund of the public employees' retirement system's defined benefit plan in a manner that ensures that the public employees' retirement system's defined benefit plan trust fund is fully compensated for expenditures made on behalf of other systems or plans so that there is no actuarial impact on the fund.

(b) The total administrative expenses of the board, including the administration of the volunteer firefighters' pension plan, may not exceed 1.5% of the total defined benefit plan retirement benefits paid.

(3) For purposes of calculating the percentage specified in subsection (2)(b), administrative expenses do not include:

(a) expenditures to purchase intangible assets for plan administration;

(b) expenses of the defined contribution plan; or

(c) expenditures of funds allocated under 19-3-112(1)(b) or (1)(c) to the education fund established in 19-3-112(1)(a).

(4) The administrative expenses of the defined contribution plan must be paid, as provided in 19-3-2105, from assets of the defined contribution plan.

History: En. 68-1904 by Sec. 25, Ch. 323, L. 1973; amd. Sec. 3, Ch. 190, L. 1974; amd. Sec. 6, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1904; amd. Sec. 2, Ch. 254, L. 1981; amd. Sec. 5, Ch. 496, L. 1981; amd. Sec. 1, Ch. 328, L. 1985; amd. Sec. 3, Ch. 4, Sp. L. June 1986; amd. Sec. 10, Ch. 265, L. 1993; Sec. 19-3-805, MCA 1991; redes. 19-2-408 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 18, Ch. 532, L. 1997; amd. Sec. 1, Ch. 286, L. 1999; amd. Sec. 11, Ch. 471, L. 1999; amd. Sec. 9, Ch. 562, L. 1999.

19-2-409. *(Temporary)* **Systems to be funded on actuarially sound basis — definition.** As required by Article VIII, section 15, of the Montana constitution, each system must be funded on an actuarially sound basis. For purposes of this section, "actuarially sound basis" means that contributions to each system must be sufficient to pay the full actuarial cost of the system. The full actuarial cost includes both the normal cost of providing benefits as they accrue in the future and the cost of amortizing unfunded liabilities over a scheduled period of no more than 30 years.

19-2-409. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Plans to be funded on actuarially sound basis — definition.** As required by Article VIII, section 15, of the Montana constitution, each system must be funded on an actuarially sound basis. For purposes of this section, "actuarially sound basis" means that contributions to each retirement plan must be sufficient to pay the full actuarial cost of the plan. For a defined benefit plan, the full actuarial cost includes both the normal cost of providing benefits as they accrue in the future and the cost of amortizing unfunded liabilities over a scheduled period of no more than 30 years. For the defined contribution plan, the full actuarial cost is the contribution defined by law that is payable to an account on behalf of the member.

History: En. Sec. 5, Ch. 287, L. 1997; amd. Sec. 12, Ch. 471, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Part 5
Management and Investment of Pension Trust Funds

Part Cross-References

Investment of public funds and public retirement system assets, Art. VIII, sec. 13, Mont. Const.
Public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Board of Investments, 2-15-1808.
State Treasurer — duties generally, 17-1-111.
State finance — investments, Title 17, ch. 6, part 2.
Separate investment funds, 17-6-203.
Firefighters' retirement — management and protection of fund, Title 19, ch. 18, part 2.
Police retirement — local funds — management of funds, Title 19, ch. 19, part 2.
Teachers' retirement — management of funds, Title 19, ch. 20, part 5.

19-2-501. *(Temporary)* **Pension trust funds established.** A pension trust fund is established and maintained for each retirement system subject to this chapter as enumerated in 19-2-302.

19-2-501. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Pension trust funds established.** A pension trust fund is established and maintained for each retirement plan within a system subject to this chapter as enumerated in 19-2-302.

History: En. Sec. 11, Ch. 265, L. 1993; amd. Sec. 13, Ch. 471, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

19-2-502. Payments from pension trust funds. (1) The board shall administer the assets of the pension trust funds as provided in Article VIII, section 15, of the Montana constitution, subject to the specific provisions of chapters 2, 3, 5 through 9, and 13 of this title.

(2) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. The contract is entered into on the first day of a member's covered employment and may be enhanced by the legislature. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination.

History: En. Sec. 12, Ch. 265, L. 1993; amd. Sec. 19, Ch. 532, L. 1997.

19-2-503. *(Temporary)* **Management of pension trust funds.** The pension trust funds must be managed as follows:

(1) The board is the trustee of all money collected for the retirement systems and has exclusive control of the administration of the pension trust funds except as otherwise provided by law.

(2) The department shall deposit in the state treasury all amounts received by the board as provided in this chapter.

(3) The state treasurer is custodian of the pension trust funds, subject to the exclusive control of the board for administration and the board of investments for the investment of the funds.

19-2-503. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Management of pension trust funds.** The pension trust funds must be managed as follows:

(1) The board is the trustee of all money collected for the retirement systems and has exclusive control of the administration of the pension trust funds except as otherwise provided by law.

(2) The department shall deposit in the state treasury all amounts received by the board as provided in this chapter.

(3) Except as provided in chapter 3, part 21, of this title, the state treasurer is custodian of the pension trust funds, subject to the exclusive control of the board for administration and the board of investments for the investment of the funds.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(1), (3), (4); amd. Sec. 13, Ch. 265, L. 1993; Sec. 19-3-601, MCA 1991; redes. 19-2-503 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 14, Ch. 471, L. 1999; amd. Sec. 10, Ch. 562, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

19-2-504. *(Temporary)* **Investment of pension trust funds.** (1) The pension trust funds of the retirement systems must be invested by the state board of investments as part of the unified investment program described in Title 17, chapter 6, part 2.

(2) All income earned on any assets constituting a part of the pension trust funds must be paid into the appropriate pension trust funds as received.

(3) The pension trust funds may be commingled for investment purposes, but separate accounts must be maintained for each system.

19-2-504. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Investment of pension trust funds.** (1) Except as provided in chapter 3, part 21, of this title, the pension trust funds of the retirement systems must be invested by the state board of investments as part of the unified investment program described in Title 17, chapter 6, part 2.

(2) All income earned on any assets constituting a part of the pension trust funds must be paid into the appropriate pension trust funds as received.

(3) The pension trust funds may be commingled for investment purposes, but separate accounts must be maintained for each system.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(2), (5); amd. Sec. 1, Ch. 221, L. 1991; amd. Sec. 14, Ch. 265, L. 1993; Sec. 19-3-602, MCA 1991; redes. 19-2-504 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 15, Ch. 471, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

19-2-505. *(Temporary)* **Restrictions on use of funds.** (1) Except as provided in this section, a member or an employee of the board or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust funds;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust funds or deposits;

(c) in any manner use the pension trust funds except to make current and necessary payments that are authorized by the board;

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust funds; or

(e) engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(2) The assets of the retirement systems may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable administrative expenses of the retirement systems administered by the board.

(3) The assets of the retirement systems remain in trust until a warrant has been negotiated or an electronic funds transfer has been deposited in accordance with law.

(4) Retirement benefits not claimed within 5 years after the member's death are forfeited and revert to the retirement system trust fund.

19-2-505. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Restrictions on use of funds.** (1) Except as provided in this section, a member or an employee of the board or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust funds;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust funds or deposits;

(c) in any manner use the pension trust funds except to make current and necessary payments that are authorized by the board;

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust funds; or

(e) engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(2) The assets of the retirement systems, including the assets of retirement accounts, may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable administrative expenses of the retirement systems administered by the board.

(3) The assets of the retirement systems remain in trust until a warrant has been negotiated or an electronic funds transfer has been deposited in accordance with law.

(4) Retirement benefits not claimed within 5 years after the member's death are forfeited and revert to the retirement system trust fund.

(5) This section does not prevent the administration of an investment alternative within the defined contribution plan to the same extent that all other investment alternatives within the defined contribution plan are managed.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(6), (7); amd. Sec. 2, Ch. 4, Sp. L. June 1986; amd. Sec. 15, Ch. 265, L. 1993; Sec. 19-3-603, MCA 1991; redes. 19-2-505 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 5, Ch. 58, L. 1999; amd. Sec. 16, Ch. 471, L. 1999; amd. Sec. 11, Ch. 562, L. 1999; amd. Sec. 7, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 inserted (3) requiring that retirement system assets remain in trust until a warrant is negotiated or an electronic funds transfer is deposited; and made minor changes in style. Amendment effective March 21, 2001.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Cross-References

State finance — investments, Title 17, ch. 6, part 2.
Police retirement — local funds — limit on use of fund, 19-19-202.
Teachers' retirement — restrictions on use of money, 19-20-502.
Suretyship, Title 28, ch. 11, part 4.

19-2-506. Payment of contributions by employers — accompanying reports — penalty. (1) The board shall prescribe by rule the procedure for payment of retirement contributions for the retirement systems administered by the board. Each employer shall pick up the employee contributions and remit the employer and employee contributions required by the member's retirement system.

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or $10 a day, whichever is greater. The board may, in its discretion, waive the penalty. The collection may be made by either:

(a) an action in a court of competent jurisdiction against the employer; or

(b) deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

(3) The board shall prescribe by rule the procedure for submitting employer reports. The reports must include data about member and nonmember employees who work for the employer. The data required must include items such as compensation paid, hourly rates, changes in pay status, current home addresses, and any other data concerning employees that the board needs to administer the specific retirement system or plan. The board shall establish the method of reporting, the reporting period, and the frequency of reports to meet the demands of the relevant retirement system or plan.

(4) Each employer shall furnish additional information concerning members that the board may request in connection with claims by members for benefits or service under a retirement system.

(5) The board, from time to time, may send materials to an employer for redistribution to employees. To facilitate distribution, each employer shall provide the board with a point of contact responsible for distributing the materials.

History: En. 68-2505 by Sec. 53, Ch. 323, L. 1973; amd. Sec. 11, Ch. 99, L. 1977; R.C.M. 1947, 68-2505(1); amd. Sec. 1, Ch. 348, L. 1979; amd. Sec. 1, Ch. 138, L. 1991; amd. Sec. 16, Ch. 265, L. 1993; Sec. 19-3-802, MCA 1991; redes. 19-2-506 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 12, Ch. 562, L. 1999; amd. Sec. 8, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) substituted language regarding submission of contributions for former language that read: "At a time prescribed by the rules of the board, each employer shall remit to the board all contributions required of the employer and its employees under retirement systems subject to this chapter on the basis of covered compensation paid during the previous pay period"; in (3) substituted language regarding submission of employer reports and specifying data in reports for former sentence that read: "Employers shall submit reports to the board, as the board requires by rule, of compensation paid to both member and nonmember employees"; in (4) deleted former first sentence that read: "The chief administrative officer of each employer shall furnish monthly reports to the board showing any changes in status during the preceding month of the employer's members resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, or death", at beginning substituted "Each employer" for "The chief administrative officer", after "members" deleted "that the board may require in the administration of the retirement systems, including the services of the employer's office and departments", and near end after "benefits" inserted "or service"; inserted (5) regarding distribution of materials to employees; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Employer to furnish itemized statement of deductions, 39-3-101.

19-2-507. Transfer between funds. Any pension trust fund out of which payments are made under the provisions of this title may be reimbursed to the extent of the payments by transfer of a sufficient sum for the reimbursement from another pension trust fund or funds under the control of the board.

History: En. 68-2506 by Sec. 54, Ch. 323, L. 1973; amd. Sec. 12, Ch. 99, L. 1977; R.C.M. 1947, 68-2506; amd. Sec. 3, Ch. 496, L. 1981; amd. Sec. 17, Ch. 265, L. 1993; Sec. 19-3-605, MCA 1991; redes. 19-2-507 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 13, Ch. 562, L. 1999.

Cross-References

Department defined, 19-2-303.

19-2-508 through 19-2-510 reserved.

19-2-511. Limitation of liability. (1) The board shall exercise its fiduciary authority in the same manner that would be used by a prudent person acting in the same capacity who is familiar with the circumstances and in an enterprise of a similar character with similar aims.

(2) Plan fiduciaries are not liable for any loss to a defined contribution plan or optional retirement program participant's or beneficiary's account that results from the participant's or beneficiary's exercise of control.

(3) Plan fiduciaries are not responsible for the acts or omissions of any vendor providing services to the defined contribution plan or optional retirement program. Nothing in this subsection limits the liability of any vendor for services required by contract.

(4) Plan fiduciaries are not liable for their reliance on the express provisions of the defined contribution plan or optional retirement program.

History: En. Sec. 3, Ch. 490, L. 2001.

Compiler's Comments

Effective Date: Section 43(1), Ch. 490, L. 2001, provided that this section is effective July 1, 2001.

Part 6
Termination of Membership and Refunds

Part Cross-References

Judges' retirement — membership, 19-5-301.
Highway patrol retirement — membership, 19-6-301.
Sheriffs' retirement — membership, 19-7-301.
Game wardens' and peace officers' retirement — membership, 19-8-301.
Police retirement — statewide plan — membership, 19-9-301.
Firefighters' unified retirement — membership, 19-13-301.

19-2-601. Termination of membership. If a member's accumulated contributions under a retirement system are refunded, the person ceases to be a member of that system, all the person's service is canceled, and the person relinquishes claim to any benefits payable to members of the retirement system.

History: En. 68-1603 by Sec. 7, Ch. 323, L. 1973; R.C.M. 1947, 68-1603; amd. Sec. 18, Ch. 265, L. 1993; Sec. 19-3-406, MCA 1991; redes. 19-2-601 by Sec. 238, Ch. 265, L. 1993.

19-2-602. Refund of member's contributions on termination of service. (1) Except as provided in this section, any member whose service has been discontinued, other than by death or retirement, must be paid the member's accumulated contributions upon the filing of a written application by the member and board approval. Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions.

(2) A nonvested member who terminates from service with accumulated contributions of less than $200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible after termination without a written application being filed by the member.

(3) A nonvested member who terminates from service with accumulated contributions of $200 to $5,000 must be paid the accumulated contributions in a lump sum as soon as

administratively feasible after termination, unless a written application is filed pursuant to subsection (4).

(4) Upon the filing of a written application by an alternate payee eligible to receive a single distribution of $200 or more under 19-2-907 or 19-2-909 or a terminating member eligible to receive a refund of $200 or more of accumulated contributions, the board shall make a direct rollover distribution as allowed under Internal Revenue Code section 401(a)(31). The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law. The applicant is responsible for designating an eligible retirement plan on forms provided by the board. The portion of the account not eligible for direct rollover distribution must be paid directly to the recipient.

History: En. 68-1905 by Sec. 26, Ch. 323, L. 1973; amd. Sec. 6, Ch. 128, L. 1975; R.C.M. 1947, 68-1905; amd. Sec. 1, Ch. 107, L. 1979; amd. Sec. 4, Ch. 496, L. 1981; amd. Sec. 19, Ch. 265, L. 1993; Sec. 19-3-703, MCA 1991; redes. 19-2-602 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 6, Ch. 58, L. 1999; amd. Secs. 14, 99(2), Ch. 562, L. 1999; amd. Sec. 9, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (4) in first sentence substituted "Upon the filing of a written application by an alternate payee eligible to receive a single distribution of $200 or more under 19-2-907 or 19-2-909 or a terminating member eligible to receive a refund of $200" for "Upon the written application of a terminating member with $200" and after "401(a)(31)" deleted "of the eligible portion of a refund of the member's accumulated contributions", at beginning of third sentence substituted "The applicant is responsible for designating an" for "The terminating member shall designate the", and at beginning of fourth sentence substituted "The portion of the account" for "Amounts of the member's accumulated contributions that are" and after "paid" substituted "directly to the recipient" for "to the terminating member. The terminating member is responsible to correctly designate an eligible retirement plan to receive the direct rollover distribution"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

PERS — member's contribution, 19-3-315.
Judges' retirement — member's contribution, 19-5-402.
Highway patrol retirement — member's contribution, 19-6-402.
Sheriffs' retirement — member's contributions 19-7-403.
Game wardens' and peace officers' retirement — member's contribution, 19-8-502.
Police retirement — statewide plan — member's contribution, 19-9-710.
Firefighters' unified retirement — member's contribution, 19-13-601.
Firefighters' retirement — refund of firefighter's contribution, 19-18-502.
Police retirement — local funds — refund of officer's contribution, 19-19-303.
Teachers' retirement — withdrawal of accumulated contributions, 19-20-603.

19-2-603. *(Temporary)* **Reinstatement after withdrawal of contributions.** (1) Except as otherwise provided in this section, any person who again becomes a member subsequent to the refund of the person's accumulated contributions after a termination of previous membership is considered a new member without credit for any previous membership service. The person may reinstate that membership service by redepositing the sum of the accumulated contributions that were refunded to the person at the last termination of the person's membership plus the interest that would have been credited to the person's accumulated contributions had the refund not taken place. If the person makes this redeposit, the service credits previously canceled must be reinstated.

(2) Regardless of whether this redeposit is made, the documents held by the retirement system as executed by the member prior to termination of membership must be held by the system for the same purposes as prior to termination, and beneficiaries nominated in the documents continue unchanged until changed as provided in this section.

19-2-603. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Reinstatement after withdrawal of contributions.** (1) Except as otherwise provided in chapter 3, part 21, of this title and this section, a person who again becomes a member of a defined benefit plan subsequent to the refund of the person's accumulated contributions after a termination of previous membership is considered a new member without credit for any previous membership service. The person may reinstate that membership service by redepositing the sum of the accumulated contributions that were refunded to the person at the last termination of the person's membership plus the interest that would have been credited to the person's accumulated contributions had the refund not taken place. If the person makes this redeposit, the service credits previously canceled must be reinstated.

(2) Regardless of whether this redeposit is made, the documents held by the retirement system as executed by the member prior to termination of membership must be held by the system for the same purposes as prior to termination, and beneficiaries nominated in the documents continue unchanged until changed as provided in this section.

History: En. 68-1906 by Sec. 27, Ch. 323, L. 1973; amd. Sec. 7, Ch. 128, L. 1975; R.C.M. 1947, 68-1906; amd. Sec. 20, Ch. 265, L. 1993; Sec. 19-3-704, MCA 1991; redes. 19-2-603 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 17, Ch. 471, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Part 7

Service Credit and Additional Contributions

Part Cross-References

PERS — service credit, Title 19, ch. 3, part 5.
Highway patrol retirement — service credit, Title 19, ch. 6, part 8.
Sheriffs' retirement — service credit, Title 19, ch. 7, part 8.
Game wardens' and peace officers' retirement — service credit, Title 19, ch. 8, part 9.
Police retirement — statewide plan — service credit, Title 19, ch. 9, part 4.
Firefighters' unified retirement — service credit, Title 19, ch. 13, part 4.

19-2-701. Service credit. (1) Service credit for all covered employment with each employer will be credited to a retirement system on a cumulative basis for all purposes, including but not limited to calculation of benefits and application of any maximum hour restrictions, limitations, or requirements. A member may not be credited with more than full-time service credit as a result of this cumulation of service credit. Subject to the provisions of chapters 3, 5 through 9, and 13, a member must receive 1 month of service credit for each full month of service under rules adopted by the board.

(2) Service credits must be used in calculating a retirement or survivorship benefit.

(3) A retired member is not eligible to earn service credit.

History: En. Sec. 21, Ch. 265, L. 1993; amd. Sec. 6, Ch. 370, L. 1997; amd. Sec. 15, Ch. 562, L. 1999.

19-2-702. Membership service. A member who is not retired must receive membership service for all periods of service, regardless of hours worked or compensation received during that service. The service must be used to determine:

(1) whether a member is vested;

(2) when the member is eligible for early or normal service retirement or disability retirement; or

(3) the eligibility of beneficiaries for survivorship benefits.

History: En. Sec. 22, Ch. 265, L. 1993; amd. Sec. 7, Ch. 370, L. 1997.

19-2-703. No duplication of benefits for same period of service. (1) A member may not receive service credit or membership service in more than one retirement system, plan, or program under Title 19 for the same period of service.

(2) A member may not receive service credit or membership service in more than one retirement system, plan, or program in Title 19 for the same period of military service.

History: En. 68-2501 by Sec. 49, Ch. 323, L. 1973; amd. Sec. 16, Ch. 332, L. 1977; R.C.M. 1947, 68-2501(2); amd. Sec. 23, Ch. 265, L. 1993; Sec. 19-3-508, MCA 1991; redes. 19-2-703 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 16, Ch. 562, L. 1999; amd. Sec. 10, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) at beginning substituted "A member may not receive service credit or membership service" for "A period of service of the member may not be credited" and after "system" substituted "plan, or program under Title 19 for the same period of service" for "enumerated in 19-2-302 for purposes of calculation of retirement benefits"; and inserted (2) precluding service credit or membership service in more than one system. Amendment effective March 21, 2001.

Cross-References

Teachers' retirement — no duplication of benefits when more than one period of service, 19-20-407.

19-2-704. Purchasing service credits allowed — payroll deduction. (1) Subject to the rules promulgated by the board, an eligible member may elect to contribute amounts in addition to the mandatory employee contributions required by the member's retirement system to purchase service credits as provided by the statutes governing the retirement system.

(2) Subject to any statutory provision establishing stricter limitations, only active or vested inactive members are eligible to purchase or transfer service credits, membership service, or contributions.

(3) A member who wishes to redeposit amounts withdrawn under 19-2-602 or who is eligible to purchase service as provided by the statutes governing the retirement system to which the member belongs may elect to make a lump-sum payment, installment payments, or a combination of a lump-sum payment and installment payments.

(4) Installment payments must be paid directly to the board, unless the member elects to make payments by irrevocable payroll deduction. The minimum installment period for payments made directly to the board is 3 months, and the maximum installment period is 5 years.

(5) To elect installment payments by irrevocable payroll deduction, the member shall file with the board and the member's employer an irrevocable, written application and authorization for payroll deductions. The application and authorization:

(a) must be signed by the member and the member's employer;

(b) must specify the dollar amount of each deduction and the number of deductions to be made, subject to any maximum amounts or duration established by state or federal law;

(c) must provide that the deductions are to be made over a period of time of no less than 3 months and no more than 5 years in duration;

(d) may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the board; and

(e) must specify that the contributions being picked up, although designated as employee contributions, are being paid by the employer directly to the board in lieu of contributions paid directly by the employee.

(6) If the board notifies the employer that a proper written application and authorization has been filed with the board, the employer shall initiate the payroll deduction as follows:

(a) An employer shall pick up the member's elective contributions made pursuant to a payroll deduction authorization. The contributions picked up by the employer must be paid from the same source as is used to pay compensation to the member and must be included as part of the member's earned compensation before the deduction is made.

(b) Employee contributions, even though designated as employee contributions for state law purposes, are paid by the member's employer in lieu of contributions paid directly by the member to the board.

(c) The member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the board.

(d) The effective date of the employer pickup and payment pursuant to this section is the date on which the employee contribution is first deducted from the employee's compensation. However, the effective date may not be prior to the date that the member properly completes the written application and authorization for payroll deductions and files it with the board. The pickup may not apply to any contributions made before the effective date or to any contributions related to compensation earned for services rendered before the effective date.

(e) Installment payments initiated by contract prior to July 1, 1999, may be paid by payroll deduction only if the member files a written application and authorization for payroll deductions pursuant to this section. If the member does not file a written application and authorization for payroll deductions pursuant to this section, the installment contract payments agreed to by the member must be paid by the member directly to the board.

(f) A member may file more than one irrevocable payroll deduction agreement and authorization as long as a subsequent deduction authorization does not amend a previous irrevocable authorization. A member may not prepay an amount under an irrevocable payroll deduction.

(7) If a member terminates service or dies before completing all payments required by a payroll deduction authorization filed pursuant to this section, the deduction authorization expires and the board shall prorate the service credit based on the amount paid as of the date of termination unless further payment is made as provided in this subsection. In the case of a termination, the member may make a lump-sum payment for the balance of the service subject to the limitations of section 415 of the Internal Revenue Code. In the case of death of the member, the payment may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code.

History: En. 68-1903 by Sec. 24, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1903; amd. Sec. 24, Ch. 265, L. 1993; Sec. 19-3-702, MCA 1991; redes. 19-2-704 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 8, Ch. 412, L. 1995; amd. Sec. 8, Ch. 370, L. 1997; amd. Sec. 7, Ch. 58, L. 1999; amd. Sec. 11, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (2) after "purchase" deleted "qualify"; in (3) after "may" inserted "elect to"; in (4) in first sentence substituted "member elects to make" for "member makes"; in (5) after "employer" deleted "a binding"; in (5)(a) substituted "must be signed" for "must be executed"; in (6) in introductory clause after "been" substituted "filed with" for "received by"; in (6)(e) at beginning of first sentence substituted "Installment payments initiated by contract prior to July 1, 1999, may be paid by payroll deduction only if the member files" for "A contract for installment payments initiated before July 1, 1999, may be made only if the member executes" and in second sentence after "member" substituted "does not file" for "does not execute"; in (6)(f) in first sentence after "member" substituted "may file" for "may make", after "one" deleted "binding", after "deduction" inserted "agreement and", and after "previous" deleted "binding", and in second sentence after "under" deleted "a binding"; in (7) in first sentence after "authorization" substituted "filed" for "made"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Board to make rules, 19-2-403.

19-2-705. Repealed. Sec. 44, Ch. 58, L. 1999.

History: En. 68-1605 by Sec. 9, Ch. 323, L. 1973; amd. Sec. 3, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1605; amd. Sec. 25, Ch. 265, L. 1993; Sec. 19-3-502, MCA 1991; redes. 19-2-705 by Sec. 238, Ch. 265, L. 1993.

19-2-706. Additional service for member involuntarily terminated from membership service. (1) An employee of the state or university system is entitled to the involuntary termination provision provided in subsection (3) if:

(a) the employee is a member of the public employees', game wardens' and peace officers', sheriffs', or highway patrol officers' retirement system;

(b) the employee's active service is involuntarily terminated because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature or, in the case of a legislator, because of term limits terminating the service of the legislator in either one of the houses of the legislature;

(c) the employee is eligible for a normal service retirement or early retirement under the applicable provisions of the retirement system to which the member belongs; and

(d) the employee waives termination benefits for which the employee would otherwise be eligible under the State Employee Protection Act.

(2) The cost of each year of service purchased under this section is the total actuarial cost of purchasing the service based on the most recent actuarial valuation of the retirement system.

(3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost of purchasing up to 3 years of additional service that the member was qualified to purchase under 19-3-513, 19-6-804, 19-7-804, or 19-8-904. The employer-paid portion applied toward the service purchase must be calculated using the formula A x B x C when:

(a) A is equal to a maximum of 3 additional years of service that the member is eligible to purchase;

(b) B is equal to the sum of the employer and employee contribution rates in the member's retirement system; and

(c) C is equal to the member's gross compensation paid during the immediate preceding 12 months of membership service. The employer may not be charged more than the total actuarial cost of the service purchased by the terminated employee.

(4) The member shall pay the difference, if any, between the full actuarial cost of the service to be purchased and the amount contributed by the employer under subsection (3). A member may elect to purchase less than the full amount of service for which the member is eligible under this section, but the election may not reduce the amount of the employer's contribution as calculated under subsection (3).

(5) The board may allow an employer to pay the contributions required under subsection (3) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

(6) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in a position covered by the public employees' retirement system or for 600 or more hours in a calendar year in a position covered under any other retirement system forfeits the additional service. The employer's contribution to purchase that member's additional service, minus any retirement benefits already paid, must be credited to the employer. As used in this subsection, the same jurisdiction means all agencies of the state, including the university system.

History: En. Sec. 5, Ch. 524, L. 1995; amd. Sec. 12, Ch. 223, L. 1997; amd. Sec. 3, Ch. 361, L. 1997; amd. Sec. 8, Ch. 58, L. 1999; amd. Sec. 1, Ch. 118, L. 1999; amd. Sec. 72, Ch. 471, L. 1999; amd. Sec. 1, Ch. 66, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 66 in (6) in first sentence after "jurisdiction for" inserted "960 or more hours in a calendar year in a position covered by the public employees' retirement system or for" and after "year" inserted "in a position covered under any other retirement system". Amendment effective March 16, 2001.

19-2-707. Qualified military service. Notwithstanding any other provision of state law governing a retirement system, contributions, benefits, and service credit for qualified military service are governed by section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994.

History: En. Sec. 9, Ch. 58, L. 1999.

19-2-708. Rollover of contributions. (1) A member who elects to and is eligible to purchase service from another retirement system or plan into a retirement system provided for in 19-2-302 may, prior to retirement, file a written application with the board to roll over, in accordance with the requirements of this part, to the retirement system to which the member belongs all or a portion of the member's account with the other eligible retirement system or plan. The total amount of the rollover to the retirement system may not exceed the amount of service that the member is allowed to purchase as a member of that system. The rollover must be completed prior to the member's retirement.

(2) The board shall accept a direct rollover of eligible distributions from another eligible retirement plan as provided in subsection (1) only to the extent permitted by section 401(a)(31) of the Internal Revenue Code.

History: En. Sec. 10, Ch. 58, L. 1999; amd. Sec. 12, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) in first sentence after "who" substituted "elects" for "wishes", after "eligible to" substituted "purchase" for "qualify", and after "prior to retirement" substituted "file a" for "make"; and made minor changes in style. Amendment effective March 21, 2001.

19-2-709. Transfer of service and contributions from other Montana public employee retirement systems. (1) A member eligible to transfer service, pursuant to 19-3-509, 19-3-511, 19-6-802, 19-7-802, 19-8-902, 19-9-405, or 19-13-404, into the system to which the member belongs shall complete the transfer prior to the member's retirement.

(2) The accumulated contributions to be transferred by the member may include both taxed contributions and tax-deferred contributions and interest. However, if less than all of the member's accumulated contributions on deposit in a pension trust fund are being transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis, with the remainder refunded to the member. The transferring agency shall at the time of the transfer identify the taxed and tax-deferred amounts being transferred to the board.

History: En. Sec. 11, Ch. 58, L. 1999.

19-2-710. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Nonapplication of part to defined contribution plan.** Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 40, Ch. 471, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Part 8
Beneficiaries

Part Cross-References

PERS — survivorship benefits and death payments, Title 19, ch. 3, part 12.
Judges' retirement — survivorship benefits and death payments, Title 19, ch. 5, part 8.
Highway patrol retirement — survivorship benefits and death payments, Title 19, ch. 6, part 9.
Sheriffs' retirement — survivorship benefits and death payments, Title 19, ch. 7, part 9.
Game wardens' and peace officers' retirement — survivorship benefits and death payments, Title 19, ch. 8, part 10.
Police retirement — statewide plan — survivorship benefits and death payments, Title 19, ch. 9, part 11.
Firefighters' unified retirement — survivorship benefits and death payments, Title 19, ch. 13, part 9.

19-2-801. Designation of beneficiary. (1) In the absence of any statutory beneficiaries, designated beneficiaries are the natural persons, charitable organizations, or trusts for the benefit of natural living persons that the member or payment recipient designates on the membership card or other form provided by the board. Unless otherwise provided by statute, a member or payment recipient may revoke the designation and name different designated beneficiaries by filing with the board a new membership card or other form provided by the board.

(2) A statutory or designated beneficiary who renounces an interest in the payment rights of a member or payment recipient will be considered, with respect to that interest, as having predeceased the member or payment recipient.

History: En. 68-2401 by Sec. 47, Ch. 323, L. 1973; R.C.M. 1947, 68-2401(part); amd. Sec. 10, Ch. 496, L. 1981; amd. Sec. 1, Ch. 154, L. 1985; amd. Sec. 26, Ch. 265, L. 1993; Sec. 19-3-1301, MCA 1991; redes. 19-2-801 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 9, Ch. 370, L. 1997; amd. Sec. 17, Ch. 562, L. 1999; amd. Sec. 13, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 inserted (2) providing that a beneficiary who renounces an interest in payment rights is considered to have predeceased the member or payment recipient; and made minor changes in style. Amendment effective March 21, 2001.

19-2-802. Effect of no designation or no surviving designated beneficiary. (1) If a statutory or designated beneficiary does not survive the member or payment recipient, the estate of the member or payment recipient is entitled to any accrued lump-sum payment or accrued retirement benefit not received prior to the member's or payment recipient's death. If the estate would not be probated but for the amount due from the retirement system, all of the amount due must be paid directly, without probate, to the surviving next of kin of the deceased or the guardians of the survivor's estate, share and share alike.

(2) Payment must be made in the same order in which the following groups are listed:

(a) husband or wife;
(b) children;
(c) father and mother;
(d) grandchildren;
(e) brothers and sisters; or
(f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the board, that there are no living individuals

in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death.

History: En. 68-2401 by Sec. 47, Ch. 323, L. 1973; R.C.M. 1947, 68-2401(part); amd. Sec. 2, Ch. 154, L. 1985; amd. Sec. 27, Ch. 265, L. 1993; Sec. 19-3-1302, MCA 1991; redes. 19-2-802 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 10, Ch. 370, L. 1997; amd. Sec. 18, Ch. 562, L. 1999.

Cross-References

Highway patrol retirement — death payments in absence of survivors, 19-6-903.
Police retirement — statewide plan — payment of death benefits in absence of spouse or child, 19-9-1102.
Firefighters' unified retirement — payment of death benefits in absence of spouse or child, 19-13-903.
Firefighters' retirement — payment of death benefits in absence of spouse or child, 19-18-607.

19-2-803. Payment to custodian of minor beneficiary. (1) If any benefit from a system is payable to a minor, the benefit must be paid to one of the following:

(a) a surviving parent, if any;
(b) a parent awarded custody of the minor in a divorce proceeding;
(c) a custodian designated under Title 72, chapter 26;
(d) a guardian appointed pursuant to Title 72, chapter 5, part 2; or
(e) a conservator appointed pursuant to Title 72, chapter 5, part 4.

(2) The payment must be in full and complete discharge and acquittance of the board and system on account of the benefit. The person shall account to the minor for the money when the minor reaches the age of majority.

History: En. 68-2402 by Sec. 48, Ch. 323, L. 1973; R.C.M. 1947, 68-2402; amd. Sec. 11, Ch. 496, L. 1981; amd. Sec. 28, Ch. 265, L. 1993; Sec. 19-3-1304, MCA 1991; redes. 19-2-803 by Sec. 238, Ch. 265, L. 1993.

19-2-804. Limitations on payment of benefits to person causing member's death or disability. If a person is convicted of knowingly, purposely, or intentionally causing a member's death or disability, that person may not receive benefits or payments from a retirement system and the benefits must be payable as otherwise provided in statute.

History: En. Sec. 1, Ch. 153, L. 1985; amd. Sec. 29, Ch. 265, L. 1993; Sec. 19-3-1305, MCA 1991; redes. 19-2-804 by Sec. 238, Ch. 265, L. 1993.

Cross-References

Homicide — effect on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations, 72-2-813.

Part 9
Management of Benefit Payments

19-2-901. Estimate of benefit when information incomplete. If it is impracticable for the board to determine from the records the length of service, the compensation, or the age of a member or if a member refuses or fails to give the board a statement of the member's state service, compensation, or age, the board may estimate, for the purposes of this title, the length of service, compensation, or age.

History: En. 68-2503 by Sec. 51, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2503; amd. Sec. 30, Ch. 265, L. 1993; Sec. 19-3-1401, MCA 1991; redes. 19-2-901 by Sec. 238, Ch. 265, L. 1993.

19-2-902. *(Temporary)* **Payment of benefits.** (1) A retirement benefit or survivorship benefit granted under a retirement system subject to this chapter must be payable in monthly installments, except as provided in this part.

(2) If the total actuarial present value of a benefit payable to a member or beneficiary is equal to or less than $5,000, the board shall pay the present value of the benefit to the member or beneficiary in a single lump sum unless the member or beneficiary chooses to receive a monthly benefit. The lump sum must be paid at the time the initial monthly benefit would otherwise be payable. An election to receive a monthly benefit must be made at least 30 days prior to the first payment date.

(3) If a benefit recipient dies before the last day of the month, a smaller pro rata amount otherwise payable to the payment recipient must be paid to the designated beneficiary, statutory beneficiary, or contingent annuitant or to the benefit recipient's estate, as appropriate.

19-2-902. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Payment of benefits.** (1) A retirement benefit or survivorship benefit granted under a retirement system subject to this chapter, other than a benefit under the defined contribution plan, must be payable in monthly installments, except as provided in this part.

(2) If the total actuarial present value of a benefit payable to a member or beneficiary is equal to or less than $5,000, the board shall pay the present value of the benefit to the member or beneficiary in a single lump sum unless the member or beneficiary chooses to receive a monthly benefit. The lump sum must be paid at the time the initial monthly benefit would otherwise be payable. An election to receive a monthly benefit must be made at least 30 days prior to the first payment date.

(3) If a benefit recipient dies before the last day of the month, a smaller pro rata amount otherwise payable to the payment recipient must be paid to the designated beneficiary, statutory beneficiary, or contingent annuitant or to the benefit recipient's estate, as appropriate.

History: En. 68-2501 by Sec. 49, Ch. 323, L. 1973; amd. Sec. 16, Ch. 332, L. 1977; R.C.M. 1947, 68-2501(1); amd. Sec. 31, Ch. 265, L. 1993; Sec. 19-3-1402, MCA 1991; redes. 19-2-902 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 12, Ch. 58, L. 1999; amd. Sec. 18, Ch. 471, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Cross-References

Teachers' retirement — benefit payments to be monthly, 19-20-703.

19-2-903. Adjustment of errors in payments. (1) If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve any of the following methods to collect the correct amount:

(a) adjustment of subsequent payments from a member or an employer;

(b) installment payments or a lump-sum payment from an employer; or

(c) a lump-sum payment or a rollover from a member.

(2) If any fraudulent change or any inadvertent mistake in records results in any member, survivor, or beneficiary receiving more or less than entitled to, then on the discovery of the error, the board shall correct the error and adjust the payments to the member, survivor, or beneficiary in an equitable manner.

History: En. 68-2509 by Sec. 57, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2509; amd. Sec. 32, Ch. 265, L. 1993; Sec. 19-3-1403, MCA 1991; redes. 19-2-903 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 14, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) substituted "If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve any of the following methods to collect the correct amount:

(a) adjustment of subsequent payments from a member or an employer;

(b) installment payments or a lump-sum payment from an employer; or

(c) a lump-sum payment or a rollover from a member" for "If more or less than the correct amount of contribution required by a retirement system subject to this chapter is or has been paid, proper adjustment must be made in connection with the subsequent payments or the adjustments may be made by direct cash payments between the member, state, or contracting employer in connection with whom the error was made and the board." Amendment effective March 21, 2001.

Cross-References

Teachers' retirement — correction of erroneous payments, 19-20-705.

19-2-904. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: En. 68-2502.1 by Sec. 7, Ch. 214, L. 1977; R.C.M. 1947, 68-2502.1; Sec. 19-3-1404, MCA 1991; redes. 19-2-904 by Sec. 238, Ch. 265, L. 1993.

Cross-References

Payments to volunteer fire companies maintaining supplemental insurance, 19-17-103.
Police retirement — local funds — withholding of group insurance premium, 19-19-505.
Group life insurance for public employees authorized, 33-20-1104.

19-2-905. Payments under workers' compensation. All payments provided for in this chapter, except as otherwise provided, are in addition to any other benefits provided for under the Workers' Compensation Act of the state of Montana.

History: En. 68-2625 by Sec. 25, Ch. 178, L. 1974; R.C.M. 1947, 68-2625; amd. Sec. 33, Ch. 265, L. 1993; Sec. 19-7-103, MCA 1991; redes. 19-2-905 by Sec. 238, Ch. 265, L. 1993.

Cross-References

Workers' compensation, Title 39, ch. 71.

19-2-906. *(Temporary)* **Limitations on disability or survivorship benefits.** If the board determines that a member's disability or death is proximately caused by the gross negligence, willful misconduct, or violation of the law by the member, the board may revoke, suspend, or refuse to grant benefits except an annuity that is the actuarial equivalent of the member's accumulated contributions with regular interest to the day the benefit commences.

19-2-906. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Limitations on disability or survivorship benefits.** If the board determines that the disability or death of a member of a defined benefit plan is proximately caused by the gross negligence, willful misconduct, or violation of the law by the member, the board may revoke, suspend, or refuse to grant benefits except an annuity that is the actuarial equivalent of the member's accumulated contributions with regular interest to the day the benefit commences.

History: En. 11-1887 by Sec. 28, Ch. 456, L. 1977; R.C.M. 1947, 11-1887; amd. Sec. 34, Ch. 265, L. 1993; Sec. 19-9-1004, MCA 1991; redes. 19-2-906 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 19, Ch. 471, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

19-2-907. Alternate payees — family law orders — rulemaking. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section; and

(b) "participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(3) A family law order must identify a participant and an alternate payee by full name, current address, date of birth, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(5) With respect to a defined benefit plan, a family law order may provide for payment to an alternate payee only as follows:

(a) Service retirement benefit payments or refunds may be apportioned by directing payment of either a percentage of the amount payable or a fixed amount of no more than the amount payable to the participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified.

(b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. Conversion of a disability retirement to a service retirement pursuant to 19-2-406(4), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be apportioned to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned as a percentage only if existing benefit payments are apportioned as a percentage. The adjustments must be apportioned as a percentage in the same ratio as existing benefit payments.

(d) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system or plan allows for that option.

(6) With respect to a defined contribution plan, a family law order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount apportioned may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may not be established for an alternate payee.

(b) If the participant is receiving periodic payments from an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(7) The duration of monthly payments apportioned from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(8) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(9) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(10) The board shall adopt rules to provide for the administration of family law orders.

History: En. Sec. 1, Ch. 259, L. 1993; amd. Sec. 1, Ch. 111, L. 1995; amd. Sec. 11, Ch. 370, L. 1997; amd. Sec. 20, Ch. 471, L. 1999; amd. Sec. 15, Ch. 99, L. 2001; amd. Sec. 4, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 99 in (5)(a) after "payments or" substituted "refunds" for "withdrawals of member contributions". Amendment effective March 21, 2001.

Chapter 490 in definition of participant near beginning after "means" inserted "an identified person who is" and near middle after "of a retirement system" inserted "or plan"; in (3) in first sentence near beginning after "order must identify" inserted "a participant and" and after "current address" inserted "date of birth"; in (4)(b) at end after "retirement system" inserted "or plan"; in (5) in introductory clause at beginning substituted "With respect to" for "In"; in (5)(a) in first sentence near middle after "directing payment of" inserted "either" and after "amount payable or" deleted "payment of" and inserted second sentence regarding payments to alternate payee; in (5)(c) in three places after "apportioned" inserted "as a percentage"; deleted former (5)(d) that read: "(d) Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified maximum time, the life of the alternate payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance"; inserted (6) regarding apportionment of a defined contribution plan by a family law order to an alternate payee; inserted (7) regarding duration of monthly payment; in (10) after "provide for the" substituted "administration of family law orders" for "application of a family law order within the defined contribution plan"; and made minor changes in style. Amendment effective July 1, 2001.

19-2-908. Time of commencement of benefit — rulemaking. (1) (a) The board shall grant a benefit to any member, or the member's statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated covered service, and filed the appropriate written application with the board. However, the board may, on its own accord and without a written application, begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

(b) A member may apply for retirement benefits before terminating covered service, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last day of membership service or, if requested by the inactive member in writing, on the first day of a later month following filing of the written application.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that service retirement benefits from a defined benefit plan commence on the first day of the month following the official's last full month in office. An official electing this option shall file a written application with the board. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system, in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) The disability retirement benefit payable to a member must commence on the day following the member's termination from service.

(4) Monthly survivorship benefits from a defined benefit plan must commence on the day following the death of the member.

(5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

(6) With respect to the defined contribution plan, the board shall adopt rules regarding the commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its implementing regulations.

History: En. Sec. 3, Ch. 370, L. 1997; amd. Sec. 13, Ch. 58, L. 1999; amd. Sec. 21, Ch. 471, L. 1999; amd. Sec. 16, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1)(a) at end of first sentence inserted "with the board"; in (2)(a) near end after "following" substituted "filing" for "receipt"; in (2)(b) inserted second sentence requiring written application and in third sentence after "calculating" substituted "highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system" for "final average salary under the retirement system"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-2-909. Execution or withholding for support obligation — rulemaking. (1) Benefits in the retirement systems or plans provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income withholding for the payment of a participant's support obligation.

(2) For purposes of this section, the following definitions apply:

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.

(c) "Participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(4) An execution or income-withholding order applied to a defined benefit retirement plan may provide for payment only as follows:

(a) Service retirement benefit payments or refunds may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(5) With respect to a defined contribution plan, an execution or income-withholding order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount apportioned may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may not be established for an alternate payee.

(b) If the participant is receiving periodic payments from an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(6) The duration of monthly or other periodic payments apportioned from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(7) The board shall adopt rules to provide for the administration of execution or income-withholding orders.

History: En. Sec. 14, Ch. 552, L. 1997; amd. Sec. 22, Ch. 471, L. 1999; amd. Sec. 17, Ch. 99, L. 2001; amd. Sec. 5, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 99 in (4)(a) near beginning after "payments or" substituted "refunds" for "withdrawals of member contributions". Amendment effective March 21, 2001.

Chapter 490 in (2)(c) near beginning after "means" inserted "an identified person who is"; deleted former (4)(d) that read: "(d) Payments must be limited to the life of the appropriate participant. The duration of payments under this section may be further limited only to a specified maximum time or the life of a specified participant. Payments may also be limited to a specific amount each month if the number of payments is specified"; inserted (5) regarding income-withholding order; inserted (6) regarding duration of monthly or periodic payments; in (7) after "provide for the" substituted "administration of execution or income-withholding orders" for "application of an execution or income-withholding order within the defined contribution plan"; and made minor changes in style. Amendment effective July 1, 2001.

Part 10
Special Provisions

19-2-1001. Maximum contribution and benefit limitations. (1) Employee contributions paid to and retirement benefits paid from a retirement system or plan may not exceed the annual limits on contributions and benefits, respectively, allowed by section 415 of the Internal Revenue Code.

(2) A member may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in section 415(b) of the Internal Revenue Code.

(3) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to a retirement system or plan if the amount of the contribution would exceed the limits provided in section 415 of the Internal Revenue Code, by using the following methods:

(a) If the law requires a lump-sum payment for the purchase of service credit, the board may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under section 415(c) or 415(n) of the Internal Revenue Code.

(b) If payment pursuant to subsection (3)(a) will not avoid a contribution in excess of the limits imposed by section 415(c) of the Internal Revenue Code, the board shall either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

(4) The limitation year for purposes of section 415 of the Internal Revenue Code is the calendar year beginning each January 1 and ending December 31.

(5) "Salary" or any other similar term used for the purposes of determining compliance with section 415 of the Internal Revenue Code includes the amount of an elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any other contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member because of sections 125, 403(b), or 457 of the Internal Revenue Code.

History: En. Sec. 1, Ch. 14, L. 1987; amd. Sec. 35, Ch. 265, L. 1993; Sec. 19-3-107, MCA 1991; redes. 19-2-1001 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 14, Ch. 58, L. 1999; amd. Sec. 31, Ch. 7, L. 2001; amd. Sec. 6, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 7 in (1) after "contributions and benefits" deleted "in". Amendment effective October 1, 2001.

Chapter 490 in (1) near middle after "paid from" substituted "a retirement system or plan" for "the retirement systems"; in (3) in introductory clause near middle after "a retirement system" inserted "or plan"; in (3)(a) near beginning after "If the" deleted "retirement system's"; and made minor changes in style. Amendment effective July 1, 2001.

19-2-1002. Vesting of retirement benefits upon termination of plan. Upon termination of a retirement system or plan, termination of employment of a substantial number of members that would constitute a partial termination of the retirement system or plan, or complete discontinuance of contributions to that retirement system or plan, the retirement benefit accrued to each member directly affected by the occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(8); amd. Sec. 36, Ch. 265, L. 1993; Sec. 19-3-606, MCA 1991; redes. 19-2-1002 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 24, Ch. 471, L. 1999; amd. Sec. 7, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 490 in three places after "retirement" inserted "system or". Amendment effective July 1, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

Cross-References

Teachers' retirement — vesting of retirement allowances upon termination of system, 19-20-504.

19-2-1003. Transfer of dormant, nonvested member-accumulated contributions. The board may, in its discretion, transfer the accumulated contributions of a nonvested member of a defined benefit system or plan to the pension trust fund of the system or plan in which the member is participating if the member has not participated in the system or plan as an employee for a period of 10 years. Rights of the member may not be jeopardized by the transfer, and the accumulated contributions must be transferred to the member's name upon subsequent return to service or subsequent application for refund.

History: En. 68-1907 by Sec. 28, Ch. 323, L. 1973; R.C.M. 1947, 68-1907; amd. Sec. 37, Ch. 265, L. 1993; Sec. 19-3-604, MCA 1991; redes. 19-2-1003 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 25, Ch. 471, L. 1999; amd. Sec. 8, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 490 in first sentence in three places before "plan" inserted "system or". Amendment effective July 1, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

Cross-References

Teachers' retirement — transfer of dormant savings account, 19-20-503.

19-2-1004. Exemption from taxes and legal process. Except as provided in 19-2-907 and 19-2-909, the right of a person to any benefit or payment from a retirement system or plan and the money in the system or plan's pension trust fund is not:

(1) subject to execution, garnishment, attachment, or any other process;

(2) subject to state, county, or municipal taxes except for:

(a) a benefit or annuity received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a refund of a member's regular contributions picked up by an employer after June 30, 1985, as provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, or 19-13-601; or

(3) assignable except as specifically provided in this chapter.

History: En. 68-2502 by Sec. 50, Ch. 323, L. 1973; R.C.M. 1947, 68-2502; amd. Sec. 3, Ch. 464, L. 1985; amd. Sec. 6, Ch. 823, L. 1991; amd. Sec. 2, Ch. 259, L. 1993; amd. Sec. 38, Ch. 265, L. 1993; Sec. 19-3-105, MCA 1991; redes. 19-2-1004 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 16, Ch. 552, L. 1997; amd. Sec. 9, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 490 in introductory clause near middle after "or payment from" substituted "a retirement system or plan" for "the retirement systems" and near end after "money in the" inserted "system or plan's"; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Benefits tax-exempt, 15-30-111.

Residential property tax credit for elderly — partial exclusion of retirement benefits from income, 15-30-171.

Firefighters' retirement — protection of benefits from legal process — nonassignability, 19-18-612.

Police retirement — local funds — protection of benefits from legal process, 19-19-504.

Teachers' retirement — exemption from taxation and legal process, 19-20-706.

University System optional retirement program — exemption from taxation, legal process, and assessments, 19-21-212.

Garnishment — earnings of judgment debtor, 25-13-614.

Exempt property — bankruptcy proceeding, 31-2-106.

Exemption of benefits from liens of health care providers, 71-3-1118.

19-2-1005. Compensation limit. A retirement system or plan subject to this chapter may not take into account compensation of a member in excess of the amount permitted in Internal Revenue Code section 401(a)(17).

History: En. Sec. 39, Ch. 265, L. 1993; amd. Sec. 26, Ch. 471, L. 1999; amd. Sec. 10, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 490 near beginning after "A retirement" inserted "system or". Amendment effective July 1, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

19-2-1006. Use of forfeitures. A retirement system or plan subject to this chapter may not apply forfeitures of benefits resulting from the member's termination of employment, the death of the member, or any other reason to increase the benefits of any member in a manner not permitted in Internal Revenue Code section 401(a)(8). However, forfeitures may be used to reduce the cost of administering a retirement system or plan subject to this chapter.

History: En. Sec. 40, Ch. 265, L. 1993; amd. Secs. 15, 46(3), Ch. 58, L. 1999; amd. Sec. 27, Ch. 471, L. 1999; amd. Sec. 11, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 490 in first sentence near beginning and in second sentence near end after "retirement" inserted "system or"; and made minor changes in style. Amendment effective July 1, 2001.

19-2-1007. Required distributions. The benefits payable by a retirement system or plan subject to this chapter are subject to the requirements of section 401(a)(9) of the Internal Revenue Code as follows:

(1) Benefits must begin by the later of April 1 of the calendar year following the calendar year in which the member reaches 70 ½ years of age or April 1 of the calendar year following the calendar year in which the member terminates employment. If a member fails to apply for retirement benefits by April 1 of the year following the calendar year in which the member attains age 70 ½ or April 1st of the year following the calendar year in which the member terminates employment, whichever is later, the board shall begin distribution of the benefit as required by the retirement system or plan to which the member belongs or, subject to subsection (2), as an option 4 benefit in chapters 3, 5, 7, and 8 of this title.

(2) The member's entire interest in a retirement system or plan must be distributed over the life of the member or the lives of the member and a designated beneficiary or over a period not extending beyond the life expectancy of the member or the life expectancy of the member and a designated beneficiary. Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations implementing that section.

(3) The life expectancy of a member or the member's beneficiary may not be recalculated after payment of the benefits has begun.

(4) When a member dies after distribution of benefits has begun, the remaining portion of the member's interest must be distributed beginning within 3 months of notification to the board of the death of the member and, if necessary, the identification of the beneficiary pursuant to 19-2-802 and must be distributed at least as rapidly as under the method of distribution prior to the member's death.

(5) When a member dies before distribution of benefits has begun, the entire interest of the member must be distributed within 5 years of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a designated beneficiary over the life or life expectancy of the beneficiary and that begins within 1 year after the date of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a surviving spouse, that is payable over the life or life expectancy of the spouse, and that begins no later than the date the member would have reached 70 ½ years of age. Distributions to a member's beneficiary must begin as soon as administratively feasible, but must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by that date, payment to the beneficiary must be made in the form of a lifetime monthly benefit payment if the beneficiary is eligible for a monthly benefit or in a lump sum if that is the only benefit payable to the beneficiary.

(6) The benefits payable must meet the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.

History: En. Sec. 41, Ch. 265, L. 1993; amd. Sec. 16, Ch. 58, L. 1999; amd. Sec. 28, Ch. 471, L. 1999; amd. Sec. 12, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 490 in introductory clause after "The benefits payable by" substituted "a retirement system or plan" for "the retirement plans"; in (1) in second sentence near middle after "by the retirement system" inserted "or plan"; and in (2) in first sentence near beginning after "in a retirement" inserted "system or". Amendment effective July 1, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

19-2-1008. Budget Act superseded. This chapter shall be valid and effective despite any provisions in the state Budget Act to the contrary.

History: En. 68-2508 by Sec. 56, Ch. 323, L. 1973; R.C.M. 1947, 68-2508; Sec. 19-3-106, MCA 1991; redes. 19-2-1008 by Sec. 238, Ch. 265, L. 1993.

Cross-References

Budget Act, Title 17, ch. 7, part 1.

19-2-1009. Penalty for fraud. A person who knowingly makes a false statement or who knowingly falsifies or permits to be falsified any record of a retirement system in an attempt to defraud the system is guilty of a misdemeanor punishable by a fine not exceeding $1,000 or imprisonment not exceeding 1 year, or both.

History: En. Sec. 23, Ch. 289, L. 1967; R.C.M. 1947, 93-1129(part); amd. Sec. 42, Ch. 265, L. 1993; Sec. 19-5-104, MCA 1991; redes. 19-2-1009 by Sec. 238, Ch. 265, L. 1993.

Cross-References

Volunteer Firefighters' Compensation Act — penalty for false statements or claims, 19-17-104.
Teachers' retirement — penalty for fraud, 19-20-105.
What constitutes actual fraud, 28-2-405.
What constitutes constructive fraud, 28-2-406.
Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

19-2-1010. Retaining qualified plan status — content of plan document — board rulemaking authority. (1) The board shall administer the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as provided in the Internal Revenue Code. If a statutory provision affecting a retirement plan administered by the board conflicts with a qualification requirement in section 401 of the Internal Revenue Code or the retirement plan's status as a governmental plan under section 414(d) of the Internal Revenue Code and with consequent federal regulations, the provision is either ineffective or must be interpreted to conform with the federal qualification requirements and allow the plan to retain its qualified status.

(2) For the purposes of section 401(a) of the Internal Revenue Code, the plan document for each retirement system is composed of the applicable provisions of the Montana constitution, this chapter, the applicable chapter in Title 19 governing the system, and applicable rules adopted by the board.

(3) The board may adopt rules to implement this section.

History: En. Sec. 1, Ch. 370, L. 1997; amd. Sec. 17, Ch. 58, L. 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-2-1011 through 19-2-1014 reserved.

19-2-1015. Probate and nonprobate transfer statutes superseded. If a provision of this chapter conflicts with a provision of Title 72, chapter 2, part 8, the provision of this chapter supersedes the conflicting provision of Title 72, chapter 2, part 8.

History: En. Sec. 19, Ch. 562, L. 1999.

Part 11
Postretirement Benefits and Benefit Increases (Repealed)

19-2-1101. Repealed. Sec. 8, Ch. 62, L. 2001; sec. 130, Ch. 99, L. 2001.

History: En. Sec. 3, Ch. 287, L. 1997; amd. Sec. 20, Ch. 562, L. 1999.

19-2-1102. Repealed. Sec. 130, Ch. 99, L. 2001.

History: En. Sec. 40, Ch. 471, L. 1999.

CHAPTER 3

PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Part 1 — General Provisions

19-3-101. Short title.
19-3-102. Repealed.
19-3-103. Retirement system created.
19-3-104 through 19-3-107. Renumbered.
19-3-108. Definitions.
19-3-109 and 19-3-110 reserved.
19-3-111. Exemption for certain university temporary employees — "temporary employee" defined.
19-3-112. Education fund established — allocation of employer contributions — educational program requirements.

Part 2 — Extension of Coverage by Local Government Employers

19-3-201. Contracts with political subdivisions.
19-3-202. Request by individual employee for employer to participate.
19-3-203. Conversion of local or state retirement plan.
19-3-204. Tax levy to meet employer's obligations.

Part 3 — Contributions and Refunds

19-3-301. Renumbered 19-2-401.
19-3-302. Renumbered 19-2-402.
19-3-303. Repealed.
19-3-304. Renumbered 19-2-403.
19-3-305. Renumbered 19-2-405.
19-3-306. Renumbered 19-2-407.
19-3-307. Repealed.
19-3-308. Terminated.
19-3-309 through 19-3-314 reserved.
19-3-315. Member's contribution to be deducted.
19-3-316. Employer contribution rates.
19-3-317. State employer to include costs in budget.
19-3-318. Credit of employer contribution made after termination.
19-3-319. State contributions for local government and school district employers.

Part 4 — Eligibility, Membership, and Vesting

19-3-401. Membership — inactive vested members — inactive nonvested members.
19-3-402. Federally subsidized employees eligible.
19-3-403. Exclusions from membership.
19-3-404. Renumbered 19-3-1211 by Code Commissioner, 1993.
19-3-405. Renumbered 19-3-318 by Code Commissioner, 1993.
19-3-406. Renumbered 19-2-601.
19-3-407 through 19-3-410 reserved.
19-3-411. Eligible employees.
19-3-412. Optional membership.

Part 5 — Service Credit

19-3-501. Absence not included in service.
19-3-502. Renumbered 19-2-705.
19-3-503. Application to purchase military service.
19-3-504. Absence due to illness or injury.
19-3-505. Purchase of previous employment with employer.
19-3-506. Repealed.
19-3-507. Repealed.
19-3-508. Renumbered 19-2-703.
19-3-509. Purchase of other Montana public service.
19-3-510. Employment in United States government.
19-3-511. Transfer and purchase of service credits and contributions from teachers' retirement system.
19-3-512. Purchase of service from other public retirement systems.
19-3-513. Application to purchase additional service.
19-3-514. Service purchase limit — exception.
19-3-515 through 19-3-519 reserved.
19-3-520. Repealed.
19-3-521. Service credit for legislative members.
19-3-522. Nonapplication of part to defined contribution plan.

Part 6 — Financial Management
(Renumbered. Sec. 238, Ch. 265, L. 1993)

Part 7 — Employee Contributions
(Renumbered)

Part 8 — Employer Contributions
(Renumbered and Repealed)

Part 9 — Service Retirement Benefits

19-3-901. Eligibility for service retirement.
19-3-902. Eligibility for early retirement.
19-3-903. Repealed.
19-3-904. Amount of service retirement benefit.
19-3-905. Adjustment of benefit for certain members.
19-3-906. Early retirement benefit.
19-3-907. Renumbered 19-3-520 by Code Commissioner, 1993.
19-3-908. Retirement incentive program — window of eligibility.
19-3-909. Nonapplication of part to defined contribution plan.

Part 10 — Disability Retirement Benefits

19-3-1001. Repealed.
19-3-1002. Eligibility for disability retirement.
19-3-1003. Repealed.
19-3-1004. Repealed.
19-3-1005. Application for disability retirement benefit.
19-3-1006. Repealed.
19-3-1007. Benefit for duty-related disability.
19-3-1008. Benefit for disability.
19-3-1009 through 19-3-1014 reserved.
19-3-1015. Medical examination of disability retiree — cancellation and reinstatement.
19-3-1016. Nonapplication of part to defined contribution plan.

Part 11 — Reemployment of Retired Members

19-3-1101. Renumbered 19-3-1501 by Code Commissioner, 1993.
19-3-1102. Renumbered 19-3-1015 by Code Commissioner, 1993.
19-3-1103. Disability benefit reduced by earnings.
19-3-1104. Cancellation of disability retirement benefit upon reemployment.
19-3-1105. Benefit upon second retirement.
19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — exception.
19-3-1107. Repealed.
19-3-1108. Repealed.
19-3-1109. Renumbered 19-3-1601 by Code Commissioner, 1993.
19-3-1110. Renumbered 19-3-1602 by Code Commissioner, 1993.
19-3-1111. Renumbered 19-3-1603 by Code Commissioner, 1993.
19-3-1112. Nonapplication of part to defined contribution plan.

Part 12 — Survivorship Benefits and Death Payments

19-3-1201. Eligibility for death payments.
19-3-1202. Amount of lump-sum death payment.
19-3-1203. Election of optional death annuity.
19-3-1204. Survivorship benefit elected by beneficiary.
19-3-1205. Amount of survivorship benefit.
19-3-1206 through 19-3-1209 reserved.
19-3-1210. Death payments to designated beneficiaries of retired members.
19-3-1211. Refund when former member dies after transferring to another system.
19-3-1212. Nonapplication of part to defined contribution plan.

Part 13 — Beneficiaries
(Renumbered and Repealed)

Part 14 — Management of Allowance Payments
(Renumbered. Sec. 238, Ch. 265, L. 1993)

Part 15 — Optional Forms of Benefit Payments

19-3-1501. Optional forms of benefits — designation of contingent annuitant.
19-3-1502. Nonapplication of part to defined contribution plan.

Part 16 — Postretirement Benefits and Benefit Increases

19-3-1601. Repealed.
19-3-1602. Repealed.
19-3-1603. Repealed.
19-3-1604. Ad hoc cost-of-living increase.
19-3-1605. Guaranteed annual benefit adjustment.
19-3-1606. Purchasing power adjustment.
19-3-1607. Nonapplication of part to defined contribution plan.

Parts 17 through 20 reserved

Part 21 — Defined Contribution Plan

19-3-2101. Definitions.
19-3-2102. Defined contribution plan established — assets to be held in trust — contracted services.
19-3-2103. Legislative intent.
19-3-2104. Board powers and duties — rulemaking.
19-3-2105. Administrative expenses and fees.
19-3-2106. Limited contract right.
19-3-2107 through 19-3-2110 reserved.
19-3-2111. Plan membership — written election required — failure to elect — effect of election.
19-3-2112. Plan choices for members employed by university system — amount available to transfer — effect on rights.
19-3-2113. Reinstatement of plan membership — purchase of prior service in defined benefit plan.
19-3-2114. Amount available to transfer.
19-3-2115. Transfers or rollovers into plan — service transfers — membership credit for purposes of vesting.
19-3-2116. Vesting — mandatory termination of membership — forfeitures.
19-3-2117. Allocation of contributions and forfeitures.
19-3-2118 through 19-3-2120 reserved.
19-3-2121. Determination and adjustment of plan choice rate and contribution allocations.
19-3-2122. Investment alternatives — notice of changes — default fund.
19-3-2123. Payout of vested account balances when terminating plan membership.
19-3-2124. Distribution options for plan members — rulemaking — minimum distribution requirements — restrictions.
19-3-2125. Death benefits.
19-3-2126. Refunds — minimum account balance — adjustment by rule.
19-3-2127 through 19-3-2130 reserved.
19-3-2131. Implementation schedule — plan effective date.
19-3-2132. Terminated.
19-3-2133. Creation of employee investment advisory council.
19-3-2134. Terminated.
19-3-2135 through 19-3-2140 reserved.
19-3-2141. Long-term disability plan — benefit amount — eligibility — administration and rulemaking.
19-3-2142. Disability benefit recipients to remain members — access to account prohibited.
19-3-2143. Implementation.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Social Security, Title 19, ch. 1.
The Public Employees' Retirement Act, Title 19, ch. 2.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.

Part 1
General Provisions

19-3-101. Short title. This chapter may be cited as "The Public Employees' Retirement System Act".

History: En. Sec. 1, Ch. 323, L. 1973; R.C.M. 1947, 68-1504.

19-3-102. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-1501 by Sec. 2, Ch. 323, L. 1973; R.C.M. 1947, 68-1501.

19-3-103. *(Temporary)* **Retirement system created.** A retirement system is created and established to become effective July 1, 1945, and to be known as the public employees' retirement system. The system is governed by the provisions of chapter 2 and this chapter.

19-3-103. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Retirement system created — system to consist of two plans.** (1) A defined benefit retirement plan is created and established to become effective July 1, 1945.

(2) A defined contribution plan is established as provided in part 21 of this chapter.

(3) The public employees' retirement system consists of the defined benefit plan and the defined contribution plan. Each plan within the system is governed by the applicable provisions of chapter 2 and this chapter.

History: En. 68-1502 by Sec. 3, Ch. 323, L. 1973; R.C.M. 1947, 68-1502; amd. Sec. 43, Ch. 265, L. 1993; amd. Sec. 29, Ch. 471, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Cross-References

Social Security — retirement systems to be considered separate, 19-1-104.
Public Employees' Retirement Board — administration, Title 19, ch. 2, part 4.

19-3-104 through 19-3-107. Renumbered. Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

Sections Renumbered:

19-3-104.	Renumbered 19-2-303.
19-3-105.	Renumbered 19-2-1004.
19-3-106.	Renumbered 19-2-1008.
19-3-107.	Renumbered 19-2-1001.

19-3-108. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) (a) "Compensation" means remuneration paid out of funds controlled by an employer in payment for the member's services, or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence, before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a);

(ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;

(iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related services;

(iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704; and

(v) lump-sum payments for compensatory leave, sick leave, or annual leave paid without termination of employment.

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Defined benefit plan" means the plan within the public employees' retirement system established in 19-3-103 that is not the defined contribution plan.

(4) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer, except that a nonprofit mental health corporation established pursuant to 53-21-204 may not be an employer with regard to employees hired after June 30, 1999.

(5) "Employer contributions" means payments to a pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(6) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(7) "System" or "retirement system" means the public employees' retirement system established in 19-3-103.

History: En. Sec. 44, Ch. 265, L. 1993; amd. Sec. 12, Ch. 640, L. 1993; amd. Sec. 18, Ch. 58, L. 1999; amd. Sec. 30, Ch. 471, L. 1999; amd. Sec. 18, Ch. 99, L. 2001; amd. Sec. 2, Ch. 149, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 99 substituted highest average compensation for final average salary as defined term and at end of second sentence of definition after "calculation of the" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

Chapter 149 in definition of compensation in (a) near middle inserted "in payment for the member's services, or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence", inserted (b)(ii) excluding in-kind goods, inserted (b)(iii) excluding in-kind services, inserted (b)(iv) excluding contributions to group insurance, and inserted (b)(v) excluding certain lump-sum payments; in definition of final average salary in second sentence near beginning after "severance pay" inserted "including compensatory leave"; and made minor changes in style. Amendment effective March 29, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

19-3-109 and 19-3-110 reserved.

19-3-111. Exemption for certain university temporary employees — "temporary employee" defined. (1) This chapter does not apply to a temporary employee of the university system.

(2) As used in this section, "temporary employee" means an employee of the university system who is hired into a position that is not permanent and who has negotiated an alternative benefits package through a labor organization certified to represent employees of the university system pursuant to Title 39, chapter 31. The employer contribution to the alternative benefits package may not exceed the cost of the benefits that the employee would otherwise be entitled to through employment.

History: En. Sec. 2, Ch. 121, L. 1995.

19-3-112. *(Subsection (1)(c) effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Education fund established — allocation of employer contributions — educational program requirements.** (1) (a) The board shall establish an education fund and provide for educational programs for system members in a manner consistent with the provisions of this section.

(b) For the initial transfer educational program established for system members, 0.1% of covered payroll from the employer contributions made pursuant to 19-3-316 must be allocated to the education fund established in subsection (1)(a).

(c) For the ongoing educational and communication programs established pursuant to this section, from the employer contributions made pursuant to 19-3-316, 0.04% of covered payroll must be allocated to the education fund established in subsection (1)(a). The board shall from time to time review the sufficiency of this amount and recommend to the legislature the adjustments that it considers appropriate.

(2) (a) The educational programs must provide system members with impartial and balanced information about plan choices. The programs must involve multimedia formats. Plan comparisons must, to the greatest extent possible, be based upon real rates of return on investments available in each retirement plan.

(b) If an educational program is conducted by a contractor, the board shall monitor the performance of the contract to ensure that the program is conducted in accordance with the contract, applicable law, and the rules of the board. A contractor hired to provide educational services pursuant to this section may not be the same entity contracted to provide other services for the defined contribution plan or the optional retirement program.

(3) The board shall provide for an initial and an ongoing transfer educational program to provide system members with information necessary to make informed plan choice decisions. The transfer educational program must include but is not limited to information on:

(a) the amount of money available to a member to transfer to the defined contribution plan;

(b) the features of and differences between the defined benefit plan and the defined contribution plan, both generally and specifically, as those differences may affect the member;

(c) the expected benefit available if the member were to retire under each of the retirement plans, based on appropriate alternative sets of assumptions;

(d) the aggregate rate of return from investments in the defined contribution plan and the period of time over which the aggregate rate of return must be achieved to equal or exceed the expected monthly benefit payable to the member under the defined benefit plan;

(e) the historical rates of return for the investment alternatives available in the defined contribution plan;

(f) the benefits and historical rates of return on investments available in deferred compensation plans or a plan under section 403(b) of the Internal Revenue Code for which the employee may be eligible;

(g) the plan choices available to employees of the university system pursuant to 19-3-2112 and the comparative benefits of each available plan; and

(h) payout options available in each of the retirement plans.

(4) An ongoing educational and communication program must provide members of either plan with information necessary to make informed decisions about choices within their plan of membership and in preparation for retirement. The program must include but not be limited to information concerning:

(a) rights and conditions of membership;

(b) benefit features within the plan, options, and the effects of certain decisions;

(c) coordination of contributions and benefits with a deferred compensation plan under section 457 of the Internal Revenue Code or a plan under section 403(b) of the Internal Revenue Code;

(d) significant plan changes;

(e) contribution rates and plan funding status; and

(f) planning for retirement.

(5) The board shall also establish a communication program to provide plan information to participating employers and the employer's personnel and payroll officers and to explain their respective responsibilities in conjunction with the retirement plans.

(6) This section does not prohibit a plan vendor or vendors from providing system members with information necessary to make informed decisions about the defined contribution plan or the optional retirement program and investment alternatives within the defined contribution plan or the optional retirement program. *(Subsection (1)(b) terminates July 1, 2002—sec. 39, Ch. 490, L. 2001.)*

History: En. Sec. 41, Ch. 471, L. 1999.

Compiler's Comments

Termination Date Changed: Section 39, Ch. 490, L. 2001, amended sec. 81, Ch. 471, L. 1999, to terminate subsection (1)(b) of this section effective July 1, 2002, rather than July 1, 2001.

Effective Date — Contingent Effective Date: Section 79(3), Ch. 471, L. 1999, provided that subsections (1)(a), (1)(b), and (2) through (6) of this section are effective July 1, 1999.

Section 79(4), Ch. 471, L. 1999, provided that subsection (1)(c) of this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Cross-References

Deferred compensation, Title 19, ch. 50.

Part 2
Extension of Coverage by Local Government Employers

Part Cross-References
Contracts, Title 28, ch. 2, 3.

19-3-201. *(Temporary)* **Contracts with political subdivisions.** (1) Any municipal corporation, county, or public agency in the state may become a contracting employer and make all or specified groups of its employees members of the retirement system by a contract entered into between the board and the legislative body of the contracting employer. The contract may include any provisions that are consistent with chapter 2 and this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees.

(2) The approval of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of the contracting employer shall adopt a resolution giving notice of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract may not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at the election must include the summary of the retirement system as set forth in the resolution. The election must be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract must be by ordinance adopted by the affirmative vote of two-thirds of the members of the legislative body, within 20 days after the adoption of the resolution or by an ordinance adopted by a majority vote of the electorate of the contracting employer voting on the contract.

(b) The contract must specify that all employees of the contracting employer or groups of employees as agreed to between the board and the contracting employer must become members. The groups of employees to be included must be by departments, duties, or other similar classifications and not by individual employees. The board may disapprove any classification into groups if, in its opinion, the classification affects adversely the interest of the retirement system. Membership in the retirement system is compulsory for all employees who are included under the contract and who are hired after the effective date of the contract.

(c) The contract may be amended in the manner prescribed in this section for the original approval of contracts. Groups of excluded employees may be subsequently included by amendment.

(3) The termination of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of a contracting employer shall adopt a resolution giving notice to its employees that it intends to terminate retirement coverage.

(b) All employees covered under the retirement system must be given notice of the termination resolution and be permitted to vote for or against the resolution by secret ballot.

(c) If a majority of covered employees votes for termination, the legislative body, within 20 days after the approval of the resolution by the employees, may adopt by a 2/3 majority a resolution terminating coverage under the system effective the last day of that month and forward the resolution and a certified copy of the election results to the board.

(d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the liabilities of the terminating agency to the retirement system, and the board may withhold approval of the termination of contract until satisfactory arrangements are made to provide funding for any excess accrued liabilities not previously funded by the terminating agency.

19-3-201. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Contracts with political subdivisions.** (1) Any municipal corporation, county, or public agency in the state may become a contracting employer and make all or specified groups of its employees members of the retirement system by a contract entered into between the board and the legislative body of the contracting employer. The contract may include any provisions that are consistent with chapter 2 and this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees.

(2) The approval of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of the contracting employer shall adopt a resolution giving notice of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract may not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at the election must include the summary of the retirement system as set forth in the resolution. The election must be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract must be by ordinance adopted by the affirmative vote of two-thirds of the members of the legislative body, within 20 days after the adoption of the resolution or by an ordinance adopted by a majority vote of the electorate of the contracting employer voting on the contract.

(b) The contract must specify that all employees of the contracting employer or groups of employees as agreed to between the board and the contracting employer shall become members. The groups of employees to be included must be by departments, duties, or other similar classifications and not by individual employees. The board may disapprove any classification into groups if, in its opinion, the classification affects adversely the interest of the retirement system. Membership in the retirement system is compulsory for all employees who are included under the contract and who are hired after the effective date of the contract. An employee's membership in either the defined benefit plan or the defined contribution plan is determined on an individual basis as provided in this chapter.

(c) The contract may be amended in the manner prescribed in this section for the original approval of contracts. Groups of excluded employees may be subsequently included by amendment.

(3) The termination of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of a contracting employer shall adopt a resolution giving notice to its employees that it intends to terminate retirement system coverage.

(b) All employees covered under the retirement system must be given notice of the termination resolution and be permitted to vote for or against the resolution by secret ballot.

(c) If a majority of covered employees votes for termination, the legislative body, within 20 days after the approval of the resolution by the employees, may adopt by a two-thirds majority a resolution terminating coverage under the system effective the last day of that month and forward the resolution and a certified copy of the election results to the board.

(d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the liabilities of the terminating agency to the retirement system, and the board may withhold approval of the termination of contract until satisfactory arrangements are made to provide funding for any excess accrued liabilities not previously funded by the terminating agency.

History: En. 68-1701 by Sec. 14, Ch. 323, L. 1973; R.C.M. 1947, 68-1701; amd. Sec. 2, Ch. 496, L. 1981; amd. Sec. 45, Ch. 265, L. 1993; amd. Sec. 31, Ch. 471, L. 1999; amd. Sec. 22, Ch. 562, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Cross-References

Power of hospital district — pension benefits, 7-34-2122.

Mental health region employees — participation, 53-21-204.

Vehicle Equipment Safety Commission — retirement benefits for employees, 61-2-205 (61-2-201, Art. III(6), Vehicle Equipment Safety Compact).

19-3-202. Request by individual employee for employer to participate. Any employee who has continuously been, for a period of at least 2 years, an employee of a municipal corporation, county, or other public agency of this state which is not a contracting employer may advise the legislative body of his employer, in writing, that he wishes to participate in the retirement system. Within 30 days after receipt of such written request, the legislative body shall thereupon adopt the resolution of intention and take such action as provided for in 19-3-201.

History: En. 68-1702 by Sec. 15, Ch. 323, L. 1973; R.C.M. 1947, 68-1702.

19-3-203. *(Temporary)* **Conversion of local or state retirement plan.** (1) If the legislative body of any city, county, or public agency having an existing retirement, pension, or annuity fund or system, referred to as the local system, desires to make the members of the local system members of the public employees' retirement system, it may enter into a contract for that purpose with the board in the manner provided in 19-3-201. However, the employees voting as provided in 19-3-201(2)(a) shall be limited to active members of the local system, and approval shall require an affirmative vote of two-thirds of the employees.

(2) All active members of the local system shall become members of the retirement system and shall no longer be members of the local system. The pensions being paid to pensioners or annuitants of the local system on the effective date of the contract must be continued and paid at their existing rates by the public employees' retirement system. The liability for the pensions must be computed by the actuary and charged to the contracting employer. All cash and securities held by the local system must be transferred to the retirement system as of the effective date of the contract and credited to the employer. The value of the securities must be determined by the board.

(3) The trustees or other administrative head of the local system as of the effective date of the contract shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the active members and the relative shares of the members as of that date. The shares must be charged to the employer and credited as accumulated contributions of the members in the public employees' retirement system and administered as if the contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section must be offset, with regular interest, against future required employer contributions. Any excess of employer charges over credits under this section must be payable by the contracting employer, with regular interest, on a monthly basis as specified in the contract.

19-3-203. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Conversion of local or state retirement plan.** (1) If the legislative body of any city, county, or public agency having an existing retirement, pension, or annuity fund or system, referred to as the local system, desires to make the members of the local system members of the public employees' retirement system, it may enter into a contract for that purpose with the board in the manner provided in 19-3-201. However, the employees voting, as provided in 19-3-201(2)(a), must be limited to active members of the local system, and approval requires an affirmative vote of two-thirds of the employees.

(2) Subject to the applicable provisions of this chapter, active members of the local system shall become members of either the defined benefit plan or the defined contribution plan of the retirement system and are no longer members of the local system. The pensions being paid to pensioners or annuitants of the local system on the effective date of the contract must be continued and paid at their existing rates by the public employees' retirement system. The liability for the pensions must be computed by the actuary and charged to the contracting employer. All cash and securities held by the local system must be transferred to the retirement system as of the effective date of the contract and credited to the employer. The value of the securities must be determined by the board.

(3) The trustees or other administrative head of the local system as of the effective date of the contract shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the active members and the relative shares of the members as of that date. The shares must be charged to the employer and credited as accumulated contributions of the members in the public employees' retirement system and administered as if the contributions had been made during membership in the retirement system. Any excess of

employer credits over charges under this section must be offset, with regular interest, against future required employer contributions. Any excess of employer charges over credits under this section must be payable by the contracting employer, with regular interest, on a monthly basis as specified in the contract.

History: En. 68-1703 by Sec. 16, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1703; amd. Sec. 46, Ch. 265, L. 1993; amd. Sec. 32, Ch. 471, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Cross-References

Social Security — declaration of policy, 19-1-101.
Employer contributions, 19-2-506.

19-3-204. Tax levy to meet employer's obligations. (1) If the required contributions to the retirement system exceed the funds available to a contracting employer from general revenue sources, the contracting employer may budget, levy, and collect annually a special tax upon the assessable property of the contracting employer in the number of cents per $100 of assessable property as is sufficient to raise the amount estimated by the legislative body to be required to provide sufficient revenue to meet the obligation of the contracting employer to the retirement system. The rate of taxation may be in addition to the annual rate of taxation allowed by law to be levied by the contracting employer.

(2) A person who is a member or designated beneficiary of the retirement system because of the participation of the contracting employer may maintain the appropriate action or proceeding to require the contracting employer to budget, levy, and collect the special tax authorized in subsection (1).

History: En. 68-1704 by Sec. 17, Ch. 323, L. 1973; R.C.M. 1947, 68-1704; amd. Sec. 4, Ch. 114, L. 1979; amd. Sec. 47, Ch. 265, L. 1993.

Cross-References

Property tax limitation, Title 15, ch. 10, part 4.
Employer contributions, 19-2-506.
Firefighters' unified retirement — taxing authority of employers, 19-13-214.

Part 3
Contributions and Refunds

Part Cross-References

Management and investment of pension trust funds, Title 19, ch. 2, part 5.
Judges' retirement — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-3-301. Renumbered 19-2-401. Sec. 238, Ch. 265, L. 1993.

19-3-302. Renumbered 19-2-402. Sec. 238, Ch. 265, L. 1993.

19-3-303. Repealed. Sec. 4, Ch. 254, L. 1981.

History: En. 68-1802 by Sec. 19, Ch. 323, L. 1973; amd. Sec. 15, Ch. 453, L. 1977; R.C.M. 1947, 68-1802(part).

19-3-304. Renumbered 19-2-403. Sec. 238, Ch. 265, L. 1993.

19-3-305. Renumbered 19-2-405. Sec. 238, Ch. 265, L. 1993.

19-3-306. Renumbered 19-2-407. Sec. 238, Ch. 265, L. 1993.

19-3-307. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. 68-2512 by Sec. 60, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2512.

19-3-308. Terminated. Sec. 7, Ch. 328, L. 1987.
History: En. Sec. 3, Ch. 328, L. 1987.

19-3-309 through 19-3-314 reserved.

19-3-315. *(Temporary)* **Member's contribution to be deducted.** (1) On and after July 1, 1997, the regular contribution of each member is 6.8% of the member's compensation. Each member's contribution increases to 6.9% beginning July 1, 1999.

(2) Payment of salaries or wages less the contribution is full and complete discharge and acquittance of all claims and demands for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

(3) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(4) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(5) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

19-3-315. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Member's contribution to be deducted.** (1) Each member's contribution is 6.9% of the member's compensation.

(2) Payment of salaries or wages less the contribution is full and complete discharge and acquittance of all claims and demands for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

(3) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(4) (a) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system.

(b) In the case of a member of the defined benefit plan, these contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) In the case of a member of the defined contribution plan, these contributions must be allocated as provided in 19-3-2117.

(5) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. 68-1902 by Sec. 23, Ch. 323, L. 1973; amd. Sec. 5, Ch. 128, L. 1975; R.C.M. 1947, 68-1902; amd. Sec. 4, Ch. 464, L. 1985; amd. Sec. 1, Ch. 558, L. 1989; amd. Sec. 52, Ch. 265, L. 1993; Sec. 19-3-701, MCA 1991; redes. 19-3-315 by Code Commissioner, 1993; amd. Sec. 8, Ch. 287, L. 1997; amd. Sec. 33, Ch. 471, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Cross-References

Refund of contributions on termination of service, 19-2-602.
Reinstatement after withdrawal of contributions, 19-2-603.
Purchase of service credits allowed, 19-2-704.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Employer to furnish itemized statement of deductions, 39-3-101.

19-3-316. Employer contribution rates. (1) Each employer shall contribute to the system. Except as provided in subsection (2), the amount of the employer contribution as a percentage of the employer's covered payroll is 6.9%. Of employer contributions made under this subsection for both defined benefit plan and defined contribution plan members, a portion must be allocated for educational programs as provided in 19-3-112. Employer contributions for members under the defined contribution plan must be allocated as provided in 19-3-2117.

(2) Local government and school district employer contributions must be the total employer contribution rate provided in subsection (1) minus the state contribution rate applied to their monthly covered payrolls under 19-3-319.

History: En. 68-2504 by Sec. 52, Ch. 323, L. 1973; amd. Sec. 12, Ch. 128, L. 1975; R.C.M. 1947, 68-2504(part); amd. Sec. 1, Ch. 254, L. 1981; amd. Sec. 3, Ch. 549, L. 1981; amd. Sec. 2, Ch. 663, L. 1983; amd. Sec. 2, Ch. 558, L. 1989; amd. Sec. 53, Ch. 265, L. 1993; Sec. 19-3-801, MCA 1991; redes. 19-3-316 by Code Commissioner, 1993; amd. Sec. 9, Ch. 287, L. 1997; amd. Sec. 50, Ch. 51, L. 1999; amd. Sec. 34, Ch. 471, L. 1999.

Cross-References

Payment of contributions by employers — accompanying reports — penalty, 19-2-506.
Judges' retirement — state's contributions, 19-5-404.
Highway patrol retirement — state's contribution, 19-6-404.
Sheriffs' retirement — employer contributions, 19-7-404.
Game wardens' and peace officers' retirement — state's contribution, 19-8-504.
Police retirement — statewide plan — employer contribution, 19-9-703.
Firefighters' unified retirement — employer contribution, 19-13-605.
Police retirement — local funds — city's contribution, 19-19-301.
Teachers' retirement — pension accumulation fund — employer contribution, 19-20-605.

19-3-317. State employer to include costs in budget. Every state employer shall include in its budget and request for legislative appropriations an amount necessary to defray the state's part of the costs of this chapter for its employees to the end that the legislature may make definite appropriation for the cost incurred by each employer the employees of which are within the retirement system created by this chapter.

History: En. 68-2505 by Sec. 53, Ch. 323, L. 1973; amd. Sec. 11, Ch. 99, L. 1977; R.C.M. 1947, 68-2505(2); Sec. 19-3-803, MCA 1991; redes. 19-3-317 by Code Commissioner, 1993.

Cross-References

Social Security — budgeting by state departments, 19-1-703.

19-3-318. Credit of employer contribution made after termination. Employer contributions on the basis of compensation earned by members after the effective date of termination of membership because of membership in another system, as provided in 19-3-403(4), must be credited to the employer.

History: En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(8)(c); amd. Sec. 54, Ch. 265, L. 1993; Sec. 19-3-405, MCA 1991; redes. 19-3-318 by Code Commissioner, 1993; amd. Sec. 19, Ch. 58, L. 1999.

19-3-319. State contributions for local government and school district employers. The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.1% of the compensation of members employed by local government entities and school districts on and after July 1, 1997. The board shall certify amounts due under this section on a monthly basis, and the state treasurer shall transfer those amounts to the pension trust fund within 1 week. The payment is statutorily appropriated as provided in 17-7-502.

History: En. Sec. 4, Ch. 287, L. 1997; amd. Sec. 39(1)(a), Ch. 532, L. 1997; amd. Sec. 23, Ch. 562, L. 1999.

Cross-References

Fund structure, 17-2-102.

Part 4
Eligibility, Membership, and Vesting

Part Cross-References

Workers' Compensation Judge — participation, 2-15-1707.
Water masters — participation, 3-7-302.
Legislators — continued participation, 5-2-304.
Termination of membership and refunds, Title 19, ch. 2, part 6.
Judges' retirement — membership, 19-5-301.
Highway patrol retirement — membership, 19-6-301.
Sheriffs' retirement — membership, Title 19, ch. 7, part 3.
Game wardens' and peace officers' retirement — membership, Title 19, ch. 8, part 3.
Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.
Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.
Teachers' retirement — membership, Title 19, ch. 20, part 3.
Community college district employees — applicability, 20-15-106.
Highway patrol officers — transfer of retirement contributions upon transfer after injury, 44-1-518.
Criminal investigation agents — coverage, 44-2-114.

19-3-401. Membership — inactive vested members — inactive nonvested members. (1) Except as otherwise provided in this chapter, all employees shall become members of the defined benefit plan on the first day of service. Each employer shall file with the board information affecting their employees' status as members as the board may require. An employee may become a member of the defined contribution plan only as provided in Title 19, chapter 3, part 21.

(2) A member of the defined benefit plan with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a service retirement benefit subject to the provisions of this chapter.

(3) A member of the defined benefit plan with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement plan. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(4) A member of either the defined benefit plan or the defined contribution plan who returns to service within 30 days of termination of service is an active member. Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan who terminates one service but remains in another service or subsequently reenters service is an active member.

(5) Time during which an employee of a school district is absent from service during official vacation is counted as service in determining eligibility for membership under this chapter.

History: En. 68-1601 by Sec. 5, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1601; amd. Sec. 1, Ch. 162, L. 1991; amd. Sec. 49, Ch. 265, L. 1993; amd. Sec. 12, Ch. 370, L. 1997; amd. Sec. 35, Ch. 471, L. 1999; amd. Secs. 24, 99(1)(d), Ch. 562, L. 1999.

19-3-402. Federally subsidized employees eligible. A person whose compensation is paid either fully or in part from federal funds but who is not subject to the federal retirement system is considered an employee and is entitled to all benefits and is required to make all employee contributions under the retirement system based upon the full salary received by such employee, including that portion of salary paid from federal funds.

History: En. 68-2510 by Sec. 58, Ch. 323, L. 1973; amd. Sec. 1, Ch. 445, L. 1977; R.C.M. 1947, 68-2510; amd. Sec. 1, Ch. 458, L. 1983.

19-3-403. Exclusions from membership. The following persons may not become members of the retirement system:

(1) inmates of state institutions;

(2) persons in state institutions principally for the purpose of training but who receive compensation;

(3) independent contractors;

(4) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for service. It is the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, except when the service qualifies, is applied for, and is purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, solely for the purposes of making regular contributions, as permanently separated from service. Exclusion under this subsection is subject to the following exceptions:

(a) When an employer has entered into a collective bargaining agreement that includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for membership in the retirement system.

(b) For the purpose of this subsection (4), persons receiving pensions, retirement benefits, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

(5) court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(6) full-time students employed at and attending the same public elementary school, high school, community college, or unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes an active member by otherwise becoming an employee may affirmatively exercise the option of purchasing the service excluded by this subsection by applying to the board in writing after becoming an active member and become eligible to receive credited service for the excluded service under the provisions of 19-3-505.

History: En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(1) thru (8)(a), (9) thru (12); amd. Sec. 1, Ch. 149, L. 1979; amd. Sec. 1, Ch. 60, L. 1981; amd. Sec. 1, Ch. 142, L. 1981; amd. Sec. 1, Ch. 147, L. 1983; amd. Sec. 1, Ch. 303, L. 1985; amd. Sec. 1, Ch. 275, L. 1991; amd. Sec. 51, Ch. 265, L. 1993; amd. Sec. 9, Ch. 308, L. 1995; amd. Sec. 9, Ch. 412, L. 1995; amd. Sec. 25, Ch. 562, L. 1999; amd. Sec. 19, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (6) near middle substituted "becomes an active member" for "becomes a member", after "option of" substituted "purchasing" for "qualifying", and after "becoming" substituted "an active member" for "a member". Amendment effective March 21, 2001.

Cross-References

Workers' Compensation Judge covered by PERS, 2-15-1707.

Power of hospital district to provide pension benefits, 7-34-2122.

Highway patrol officers — transfer of retirement contributions upon transfer after injury, 44-1-518.

Mental health region employees — participation, 53-21-204.

Vehicle Equipment Safety Commission — retirement benefits for employees, 61-2-205 (61-2-201, Art. III(6), Vehicle Equipment Safety Compact).

19-3-404. Renumbered 19-3-1211 by Code Commissioner, 1993.

19-3-405. Renumbered 19-3-318 by Code Commissioner, 1993.

19-3-406. Renumbered 19-2-601. Sec. 238, Ch. 265, L. 1993.

19-3-407 through 19-3-410 reserved.

19-3-411. Eligible employees. Subject to 19-3-402, 19-3-403, and 19-3-412, eligible employees under the system who are not covered by a separate retirement system under this title include the following:

(1) any employee of the state of Montana, its university system or any of the colleges, schools, components, or units of the university system; and

(2) any employee of a contracting employer eligible to participate under the contract between the board and the contracting employer under 19-3-201.

History: En. Sec. 48, Ch. 265, L. 1993.

19-3-412. Optional membership. (1) The following employees in covered employment may become members of the retirement system at their option by filing an irrevocable, written application with the board within 180 days of commencement of their employment:

(a) elected officials of the state or local governments who are paid on a salary or wage basis rather than on a per diem or other reimbursement basis;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes.

(2) (a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.

(b) A legislator may also become a member as of the date prior to December 30, 2000, that the legislator filed an irrevocable written application with the board to become a member and paid the employee share of contributions determined by the board to be required to purchase the legislator's prior service. However, the legislator shall purchase at least 5 years of service credit or, if the legislator has less than 5 years of membership service, service credit equal to all of the legislator's membership service. The legislative branch is responsible for paying the amount determined by the board to be the employer's share of contributions required to purchase a legislator's service under this subsection (2)(b).

(3) If an employee declines optional membership, the employee shall sign a statement waiving membership and file it with the employer. The employer shall file the statement with the board and retain a copy of the statement. An employee who declines optional membership may not receive membership credit or service credit for the employment for which membership was declined.

(4) An employee who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service pursuant to this subsection must comply with 19-3-505.

(5) Membership in the retirement system is not optional for an employee who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(6) An employee who declines membership while employed in a position for which membership is optional may not later become a member while still employed in that position. If, after a break in service of 30 days or more, an employee who was a member in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership. However, if the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(7) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership and did not have a 30-day break in service.

(8) If an employee or official fails to file with the board an irrevocable, written application within the time allowed in this section, the employee or official waives membership.

History: En. Sec. 50, Ch. 265, L. 1993; amd. Sec. 1, Ch. 208, L. 1997; amd. Sec. 13, Ch. 370, L. 1997; amd. Sec. 51, Ch. 51, L. 1999; amd. Sec. 20, Ch. 58, L. 1999; amd. Sec. 26, Ch. 562, L. 1999; amd. Sec. 20, Ch. 99, L. 2001; amd. Sec. 1, Ch. 285, L. 2001; amd. Sec. 1, Ch. 357, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 99 in (3) in first sentence substituted "employee shall sign" for "employee shall execute" and after "membership and" inserted "file it with the employer" and in second sentence after "employer shall" inserted "file the statement with the board and" and after "retain" inserted "a copy of"; and in (4) in first sentence substituted "member may purchase" for "member may qualify" and at beginning of second sentence substituted "Purchase" for "Qualification". Amendment effective March 21, 2001.

Chapter 285 in (1)(f) after "rest homes" deleted "in counties of the third, fourth, fifth, sixth, and seventh class". Amendment effective October 1, 2001.

Chapter 357 in (2)(a) at beginning inserted exception clause; and inserted (2)(b) concerning legislators becoming members; and made minor changes in style. Amendment effective April 23, 2001.

Retroactive Applicability: Section 3, Ch. 357, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all persons who were legislators on July 1, 1999."

Part 5
Service Credit

Part Cross-References

Service credit and additional contributions, Title 19, ch. 2, part 7.

Teachers' retirement — creditable service, Title 19, ch. 20, part 4.

19-3-501. Absence not included in service. Except as otherwise provided in this part, time during which a member is absent from service may not be included in the calculation of service credit.

History: En. 68-1604 by Sec. 8, Ch. 323, L. 1973; amd. Sec. 2, Ch. 99, L. 1977; R.C.M. 1947, 68-1604; amd. Sec. 55, Ch. 265, L. 1993.

Cross-References

School district employee's official vacation absence counted as service, 19-3-401.

19-3-502. Renumbered 19-2-705. Sec. 238, Ch. 265, L. 1993.

19-3-503. Application to purchase military service. (1) (a) Except as provided in subsection (2) and subject to 19-3-514, a member with at least 10 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit for up to 5 years of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945.

(b) To purchase this service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

(2) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

History: En. 68-1605.1 by Sec. 10, Ch. 323, L. 1973; amd. Sec. 2, Ch. 128, L. 1975; R.C.M. 1947, 68-1605.1; amd. Sec. 5, Ch. 609, L. 1989; amd. Sec. 56, Ch. 265, L. 1993; amd. Sec. 10, Ch. 287, L. 1997; amd. Sec. 21, Ch. 58, L. 1999; amd. Sec. 1, Ch. 494, L. 1999; amd. Sec. 21, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 near beginning of (1)(a) after "subsection (2)" substituted "and subject to 19-3-514, a member with at least 10 years of service credit" for "a member with 10 years or more of service credits", after "retirement" substituted "file a written application" for "make a written election", after "purchase service" substituted "credit for up to 5 years" for "credits for all or any portion", and at end after "1945" deleted "up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to 19-2-707 or is ineligible under subsection (2)"; in (1)(b) substituted language regarding purchase of military service for former language that read: "To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of the service credit based on the most recent actuarial valuation of the system"; in (2) at beginning of introductory clause inserted "A member is not eligible to purchase military service under this section"; in (2)(a) at end after "benefit" substituted "based on that military service" for "the member may not qualify the member's military service under subsection (1)"; and inserted (2)(b) and (2)(c) providing that a member cannot purchase military service if eligible to receive other credit for that service". Amendment effective March 21, 2001.

Section 32, Ch. 7, L. 2001, purported to amend this section. However, the temporary version terminated July 1, 2001, prior to the effective date of the amendment, which was October 1, 2001.

Cross-References

Veteran defined, 10-2-101.
Reemployment of public employee upon completion of military service, 10-2-221.
Highway patrol retirement — election to qualify military service, 19-6-801.
Sheriffs' retirement — election to qualify previous military service, 19-7-803.
Game wardens' and peace officers' retirement — election to qualify military service, 19-8-901.
Police retirement — statewide plan — election to qualify previous military service, 19-9-403.
Firefighters' unified retirement — election to qualify previous military service, 19-13-403.
Police retirement — local funds — election to qualify previous military service, 19-19-406.

19-3-504. Absence due to illness or injury. (1) Time, not to exceed 5 years, during which a member is absent from service because of injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service credits for this period unless the member complies with subsections (2) and (3), in which case the absence is considered as time spent in service for both service credits and membership service.

(2) (a) A member absent because of an employment-related injury entitling the member to workers' compensation payments may, upon the member's return to service, contribute to the retirement system an amount equal to the contributions that would have been made by the member to the system on the basis of the member's compensation at the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to covered service to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to covered service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).

(4) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602 or for the period of time during which retirement benefits are received if the member retires during the absence.

History: En. 68-1606 by Sec. 11, Ch. 323, L. 1973; amd. Sec. 1, Ch. 300, L. 1977; R.C.M. 1947, 68-1606; amd. Sec. 1, Ch. 311, L. 1983; amd. Sec. 1, Ch. 103, L. 1987; amd. Sec. 57, Ch. 265, L. 1993; amd. Sec. 14, Ch. 370, L. 1997; amd. Sec. 22, Ch. 58, L. 1999.

Cross-References

Teachers' retirement — creditable service for employment while on leave, 19-20-403.
Workers' compensation — injury defined, 39-71-119.
Reinstatement to job following pregnancy-related leave of absence, 49-2-311.

19-3-505. Purchase of previous employment with employer. (1) Subject to the provisions of this section, a member who has employment for which optional membership was declined or employment with an employer prior to the employer's contract coverage may file a written application with the board to purchase all or a portion of the employment for service credit. The application must include salary information certified by the member's employer or former employer.

(2) (a) A purchase of service under this section is subject to the board's approval.

(b) If the board approves the request, the member shall pay the amount that the member and the member's employer would have contributed during the period of employment as if the employment had been covered by the retirement system and shall pay the regular interest that would have accumulated on the amount to the time of payment. However, the employer may pay the employer's portion, including accrued regular interest as provided in subsection (2)(c).

(c) The employer shall establish a policy as to the payment of retroactive employer contributions and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination are subject to the determination of the board. All successful appeals obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing the appeal with the board. Each appeal must be heard on its individual merits and may not bind the employer to pay all retroactive payments for all former and present employees.

History: En. 68-1607 by Sec. 12, Ch. 323, L. 1973; amd. Sec. 2, Ch. 190, L. 1974; amd. Sec. 3, Ch. 128, L. 1975; amd. Sec. 1, Ch. 89, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1607; amd. Sec. 2, Ch. 103, L. 1987; amd. Sec. 58, Ch. 265, L. 1993; amd. Sec. 23, Ch. 58, L. 1999; amd. Sec. 27, Ch. 562, L. 1999; amd. Sec. 22, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) in first sentence after "coverage may" substituted "file a written application with the board to purchase" for "request to qualify" and at end after "employment" substituted "for service credit" for "as membership service by filing written application with the board" and inserted second sentence requiring that the application contain salary information; inserted (2)(a) providing that a purchase of service is subject to board approval; near beginning of first sentence of (2)(b) substituted "approves the request" for "approves the application" and after "pay" deleted "to the board the sum of"; deleted former (3) that read: "(3) A member may secure service credit not previously credited by submitting salary information certified by the member's employer or former employer to the board. The board shall determine the eligibility of all service credit requests"; and made minor changes in style. Amendment effective March 21, 2001.

19-3-506. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-1608 by Sec. 13, Ch. 323, L. 1973; amd. Sec. 4, Ch. 128, L. 1975; amd. Sec. 2, Ch. 89, L. 1977; amd. Sec. 4, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1608.

19-3-507. Repealed. Sec. 4, Ch. 290, L. 1983.

History: En. 68-2511 by Sec. 59, Ch. 323, L. 1973; amd. Sec. 13, Ch. 99, L. 1977; R.C.M. 1947, 68-2511.

19-3-508. Renumbered 19-2-703. Sec. 238, Ch. 265, L. 1993.

19-3-509. Purchase of other Montana public service. (1) (a) A member may, at any time before retirement, file a written application with the board to purchase as service in this retirement system all or any portion of the member's service credit in the highway patrol officers', sheriffs', game wardens' and peace officers', firefighters' unified, or municipal police officers' retirement system to the extent that the member either has received or is eligible to receive a refund of membership contributions. To purchase this service, the member shall pay the actuarial cost of the service in the public employees' retirement system, as determined by the board, based on the system's most recent actuarial valuation minus the employer contribution provided in subsection (1)(b).

(b) Upon receiving the member's payment under subsection (1)(a), the board shall transfer from the member's former retirement system to the public employees' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal cost contribution rate minus the employee contribution rate in the public employees' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, file a written application with the board to purchase all or a portion of full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's former public employer. To purchase service under this section, the employee shall pay the actuarial cost of the service in the public employees' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

History: En. Sec. 1, Ch. 145, L. 1981; amd. Sec. 3, Ch. 290, L. 1983: amd. Sec. 1, Ch. 331, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 59, Ch. 265, L. 1993; amd. Sec. 10, Ch. 412, L. 1995; amd. Sec. 52, Ch. 51, L. 1999; amd. Sec. 28, Ch. 562, L. 1999; amd. Sec. 23, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1)(a) near beginning of first sentence after "retirement" substituted "file a written application with the board to purchase" for "make a written election with the board to qualify" and at beginning of second sentence substituted "To purchase" for "To qualify", after "member shall" substituted "pay the actuarial cost of the service" for "contribute to the pension trust fund the actuarial cost of granting the service", and after "based on the" inserted "system's"; in (2)(a) near beginning of first sentence after "retirement" substituted "file a written application with the board to purchase all or a portion of" for "make a written election with the board to qualify any" and at beginning of third sentence substituted "To purchase service under this section, the employee shall pay the actuarial cost of the service" for "The board may grant service credit upon contribution by the employee of the actuarial cost of granting this service"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Highway patrol retirement — qualification of other Montana public service, 19-6-802.
Sheriffs' retirement — qualification of other Montana public service, 19-7-802
Game wardens' and peace officers' retirement — qualification of other Montana public service, 19-8-902.
Police retirement — statewide plan — qualification of other Montana public service, 19-9-405.
Firefighters' unified retirement — qualification of other Montana public service, 19-13-404.
Police retirement — local funds, Title 19, ch. 19.

19-3-510. Employment in United States government. (1) A member who is assigned to an agency of the United States government under Title IV, the Intergovernmental Personnel Act of 1970, may purchase the federal employment as service in the retirement system under subsection (2) if:

(a) the member has accrued 5 years or more of membership service in the retirement system; and

(b) the member returns to full-time service with the former state or local government employer for at least 1 year after completing employment in the United States government.

(2) A member of the retirement system who is assigned to an agency of the United States government has the option to:

(a) continue the member's payments into the pension trust fund; or

(b) purchase the period of federal employment under this section within 2 years after return to service under the retirement system.

(3) Salary earned while on assignment to an agency of the United States government must be considered compensation for the purposes of the retirement system and may be included in the determination of highest average compensation, provided that the highest average compensation does not exceed 100% of the member's highest annual compensation earned as a state or local government employee.

History: En. Sec. 1, Ch. 261, L. 1981; amd. Sec. 60, Ch. 265, L. 1993; amd. Sec. 24, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) in introductory clause substituted "may purchase" for "may qualify"; in (2)(b) at beginning substituted "purchase" for "qualify"; in (3) near middle after "determination of" substituted "highest average compensation, provided that the highest average compensation does not" for "final average salary, provided that the final average salary cannot"; and made minor changes in style. Amendment effective March 21, 2001.

19-3-511. Transfer and purchase of service credits and contributions from teachers' retirement system. (1) Except as provided in subsection (3)(b), an active member may, at any time before retirement, file a written application with the board to purchase in the public employees' retirement system the member's service in the teachers' retirement system to the extent that the member has either received or is eligible to receive a refund for the service.

(2) The cost of purchasing service under this section is the sum of subsections (2)(a) and (2)(b) as follows:

(a) The teachers' retirement system shall transfer an amount equal to 72% of the amount payable by the member.

(b) The member shall pay either directly or by transferring contributions on account with the teachers' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated with the teachers' retirement system, plus accrued interest. Interest must be calculated from the date of termination until payment is received by the public employees' retirement system, based on the interest tables in use by the teachers' retirement system.

(3) (a) The amount of service credit granted in subsection (1) must be on a month-by-month basis.

(b) Service credit transferred from the teachers' retirement system is subject to the provisions and limitations of 19-3-514.

(4) Subject to the provisions of 19-2-403, the board is the sole authority in determining the amount of service credit that a member may purchase under this section and the amount paid to the retirement system under subsection (2).

(5) If an active member who also has service credit in the teachers' retirement system dies before the member purchases this service in the public employees' retirement system and if the service credits from both systems, when combined, entitle the member's designated beneficiary to a survivorship benefit, the payment of the survivorship benefit is the liability of the public employees' retirement system. Before payment of the survivorship benefit, the teachers' retirement board shall transfer to the public employees' retirement system the contributions necessary to purchase this service in the public employees' retirement system, as provided in subsection (2).

(6) If the board determines that a member was erroneously classified and reported to the teachers' retirement system, the member's accumulated contributions and service, together with the employer contributions plus interest, must be transferred to the public employees' retirement system. Employee and employer contributions due as calculated under 19-3-315 and 19-3-316 are the liability of the employee and the employing entity, respectively, where the error occurred. For the period of time that the employer contributions are held by the teachers' retirement system, interest paid on employer contributions transferred under this subsection must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.

History: En. Sec. 1, Ch. 290, L. 1983; amd. Sec. 1, Ch. 690, L. 1989; amd. Sec. 1, Ch. 64, L. 1991; amd. Sec. 61, Ch. 265, L. 1993; amd. Sec. 11, Ch. 412, L. 1995; amd. Sec. 15, Ch. 370, L. 1997; amd. Sec. 25, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) at beginning inserted exception clause, after "retirement" substituted "file a written application with the board to purchase" for "make a written election with the board to qualify", near middle before "the member's service" deleted "all of", and at end inserted "for the service"; at beginning of (2) substituted "The cost of purchasing service" for "The amount that must be paid or transferred to the retirement system to qualify this service"; in (3)(b) at beginning substituted "Service credit" for "Military service credit" and after "system" substituted "is subject to the provisions and limitations of 19-3-514" for "must be included in the 5-year maximum military service credit provided for in 19-3-503"; in (4) after "credit" substituted "that a member may purchase" for "qualified"; in (5) near beginning of first sentence after "member" substituted "purchases" for "qualifies" and near middle of second sentence after "necessary to" substituted "purchase" for "qualify"; and made minor changes in style. Amendment effective March 21, 2001.

19-3-512. Purchase of service from other public retirement systems. (1) Subject to 19-3-514, a member with at least 5 years of membership service in the public employees' retirement system may purchase:

(a) public service employment covered under a public retirement system other than a system provided for in Title 19 for which the member received a refund of the member's membership contribution; and

(b) public service employment that occurred before the public employer adopted a public retirement system.

(2) A member may not purchase more than 5 years of service under this section. To purchase this service, a member shall:

(a) at any time before retirement, file a written application with the board; and

(b) pay the actuarial cost of the service in the public employees' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(3) Service purchased under this section may not be used to qualify a member to purchase military service under 19-3-503.

(4) Service purchased under this section may not be used in calculating a member's retirement benefit unless the member's last 5 years of service credit were earned under the public employees' retirement system. If, upon the member's retirement, the member's purchased service cannot be used in calculating the member's retirement benefit, the member must receive a refund of the amount paid to purchase the service, plus regular interest on that amount.

History: En. Sec. 1, Ch. 11, L. 1987; amd. Sec. 1, Ch. 196, L. 1989; amd. Sec. 62, Ch. 265, L. 1993; amd. Sec. 11, Ch. 287, L. 1997; amd. Sec. 24, Ch. 58, L. 1999; amd. Sec. 29, Ch. 562, L. 1999; amd. Sec. 26, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) at beginning of introductory clause substituted "Subject to 19-3-514, a member with at least 5 years" for "A member with 5 or more years" and at end substituted "purchase" for "qualify"; in

(2) in two places in introductory clause substituted "purchase" for "qualify"; in (2)(a) after "retirement" substituted "file a written application with the board" for "make a written election with the board to qualify the service"; in (2)(b) at beginning substituted "pay" for "contribute to the pension trust fund" and after "cost of" deleted "granting"; in (3) and (4) at beginning substituted "Service purchased" for "Service qualified"; in (4) at beginning of second sentence substituted "If, upon the member's retirement, the member's purchased service cannot" for "If a member's qualified service may not", near middle after "member" substituted "must" for "may choose to", and after "refund of the" substituted "amount paid to purchase the service, plus regular interest on that amount" for "accumulated contributions made to qualify the service"; and made minor changes in style. Amendment effective March 21, 2001.

19-3-513. Application to purchase additional service. (1) Subject to 19-3-514, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase this service under this section, a member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation.

(3) Service purchased under this section is not membership service and may not be used to qualify a member for service retirement.

History: En. Sec. 1, Ch. 73, L. 1989; amd. Sec. 17, Ch. 16, L. 1991; amd. Sec. 63, Ch. 265, L. 1993; amd. Sec. 12, Ch. 287, L. 1997; amd. Sec. 25, Ch. 58, L. 1999; amd. Sec. 2, Ch. 494, L. 1999; amd. Sec. 27, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) at beginning substituted "Subject to 19-3-514, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase" for "At any time before retirement, a person who has 5 years or more of membership service may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase" and at end deleted "that the member has qualified under the retirement system, up to a maximum of 5 years of additional service"; at beginning of (2) substituted "To purchase this service" for "For each year of service credit purchased" and after "member shall" substituted "pay" for "contribute to the pension trust fund"; deleted former (3)(a) and (3)(b) that read: "(a) Except as provided in subsection (3)(b), a member may elect to qualify a combined total of 5 years of service under 19-3-503, 19-3-512, or this section.

(b) A member who has purchased service under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service under this section shall receive credit for the full months of service purchased on or before January 1, 1990"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Service credit and additional contributions, Title 19, ch. 2, part 7.

19-3-514. Service purchase limit — exception. (1) Except as provided in subsection (2), a member may not purchase more than a combined total of 5 years under 19-3-503, 19-3-511(3)(b), 19-3-512, and 19-3-513.

(2) A member who has purchased service under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service under 19-3-513 must receive credit for the full months of service purchased on or before January 1, 1990.

History: En. Secs. 28, 29, Ch. 99, L. 2001.

Compiler's Comments

Version Not Codified: Section 28, Ch. 99, L. 2001, was not codified because of its short duration. The section was effective March 21, 2001, and terminated June 30, 2001. The only difference between sec. 28 and sec. 29 was that sec. 29(1) contains a reference to 19-3-503.

Effective Date: Section 132(2), Ch. 99, L. 2001, provided that this section is effective June 30, 2001.

19-3-515 through 19-3-519 reserved.

19-3-520. Repealed. Sec. 44, Ch. 58, L. 1999.

History: En. Sec. 1, Ch. 71, L. 1989; amd. Sec. 64, Ch. 265, L. 1993; Sec. 19-3-907, MCA 1991; redes. 19-3-520 by Code Commissioner, 1993.

19-3-521. Service credit for legislative members. A member of the legislature of Montana must be credited with membership service for that portion of each year for which the member pays regular contributions.

History: En. Sec. 65, Ch. 265, L. 1993; amd. Sec. 30, Ch. 562, L. 1999.

Cross-References

Legislators — continued participation, 5-2-304.

19-3-522. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Nonapplication of part to defined contribution plan.** Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 40, Ch. 471, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Part 6

Financial Management (Renumbered. Sec. 238, Ch. 265, L. 1993)

Part Compiler's Comments

Sections Renumbered:

19-3-601. Renumbered 19-2-503.
19-3-602. Renumbered 19-2-504.
19-3-603. Renumbered 19-2-505.
19-3-604. Renumbered 19-2-1003.
19-3-605. Renumbered 19-2-507.
19-3-606. Renumbered 19-2-1002.

Part 7

Employee Contributions (Renumbered)

Part Compiler's Comments

Sections Renumbered:

19-3-701. Renumbered 19-3-315 by Code Commissioner, 1993.
19-3-702. Renumbered 19-2-704. Sec. 238, Ch. 265, L. 1993.
19-3-703. Renumbered 19-2-602. Sec. 238, Ch. 265, L. 1993.
19-3-704. Renumbered 19-2-603. Sec. 238, Ch. 265, L. 1993.

Part 8

Employer Contributions (Renumbered and Repealed)

Part Compiler's Comments

Sections Renumbered and Repealed:

19-3-801. Renumbered 19-3-316 by Code Commissioner, 1993.
19-3-802. Renumbered 19-2-506. Sec. 238, Ch. 265, L. 1993.
19-3-803. Renumbered 19-3-317 by Code Commissioner, 1993.
19-3-804. Repealed. Sec. 236, Ch. 265, L. 1993.
19-3-805. Renumbered 19-2-408. Sec. 238, Ch. 265, L. 1993.

Histories of Repealed Sections:

19-3-804. En. 68-2507 by Sec. 55, Ch. 323, L. 1973; R.C.M. 1947, 68-2507; amd. Sec. 2, Ch. 348, L. 1979; amd. Sec. 2, Ch. 138, L. 1991.

Part 9

Service Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Judges' retirement — service retirement, Title 19, ch. 5, part 5.
Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.
Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.
Game wardens' and peace officers' retirement — service retirement, Title 19, ch. 8, part 6.
Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.
Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.
Teachers' retirement — superannuation retirement, Title 19, ch. 20, part 8.

19-3-901. Eligibility for service retirement. (1) A member who has attained the age of 60 and has 5 years of membership service is eligible for service retirement. A member who has attained age 65 while employed in a position covered by a public employees' retirement system is eligible for service retirement regardless of the member's years of membership service. A member who has 30 years or more of membership service is eligible for service retirement regardless of the member's age.

(2) In each of the circumstances described in subsection (1), the member has attained normal retirement age.

History: En. 68-2001 by Sec. 29, Ch. 323, L. 1973; amd. Sec. 8, Ch. 128, L. 1975; R.C.M. 1947, 68-2001(1); amd. Sec. 2, Ch. 162, L. 1991; amd. Sec. 66, Ch. 265, L. 1993; amd. Sec. 30, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 inserted (2) providing that in each circumstance described in subsection (1), the member is considered to have attained normal retirement age; and made minor changes in style. Amendment effective March 21, 2001.

19-3-902. Eligibility for early retirement. A member who is not eligible for service retirement but has attained age 50 and has 5 years of membership service is eligible for early retirement. A member who has completed 25 years or more of membership service is eligible for early retirement.

History: En. 68-2001 by Sec. 29, Ch. 323, L. 1973; amd. Sec. 8, Ch. 128, L. 1975; R.C.M. 1947, 68-2001(2); amd. Sec. 6, Ch. 496, L. 1981; amd. Sec. 67, Ch. 265, L. 1993.

Cross-References

Sheriffs' retirement — early retirement option, 19-7-502.
Firefighters' retirement — partial service pension, 19-18-603.
Teachers' retirement — early retirement, 19-20-802.

19-3-903. Repealed. Sec. 39, Ch. 370, L. 1997.

History: En. 68-2002 by Sec. 30, Ch. 323, L. 1973; amd. Sec. 11, Ch. 332, L. 1977; R.C.M. 1947, 68-2002; amd. Sec. 1, Ch. 53, L. 1983; amd. Sec. 2, Ch. 196, L. 1989; amd. Sec. 68, Ch. 265, L. 1993.

19-3-904. Amount of service retirement benefit. (1) Except as provided in subsection (2), the monthly amount of retirement benefit payable to a member following service retirement is the greater of subsection (1)(a) or (1)(b) as follows:

(a) one fifty-sixth of the member's highest average compensation multiplied by the number of years of the member's total service credit; or

(b) a monthly benefit that is the sum of:

(i) the actuarial equivalent of double the member's regular contributions and regular interest; plus

(ii) the actuarial equivalent of any additional contributions and regular interest.

(2) The monthly amount of retirement benefit payable to a member who has at least 25 years of membership service is equal to one-fiftieth of the member's highest average compensation multiplied by the number of years of the member's total service credit.

History: En. 68-2003 by Sec. 31, Ch. 323, L. 1973; amd. Sec. 9, Ch. 128, L. 1975; amd. Sec. 2, Ch. 241, L. 1977; amd. Sec. 12, Ch. 332, L. 1977; R.C.M. 1947, 68-2003; amd. Sec. 2, Ch. 73, L. 1989; amd. Sec. 3, Ch. 558, L. 1989; amd. Sec. 69, Ch. 265, L. 1993; amd. Sec. 31, Ch. 562, L. 1999; amd. Sec. 31, Ch. 99, L. 2001; amd. Sec. 1, Ch. 217, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 99 in (1)(a) near middle substituted "highest average compensation" for "final average salary"; in (1)(b) at end of introductory clause inserted "sum of"; inserted (1)(b)(ii) regarding the actuarial equivalent of additional contributions and regular interest; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 217 at beginning of (1) inserted exception clause; inserted (2) concerning retirement benefit for 25 years of membership service; and made minor changes in style. Amendment effective July 1, 2001. In (1) the code commissioner substituted references to subsections (1)(a) and (1)(b) for references to subsections (1) and (2) to reflect the Ch. 217 amendment.

Cross-References

Judges' retirement — service retirement benefit, 19-5-502.
Highway patrol retirement — service retirement benefit, 19-6-502.
Sheriffs' retirement — service retirement benefit, 19-7-503.
Game wardens' and peace officers' retirement — service retirement benefit, 19-8-603.
Police retirement — statewide plan — amount of retirement benefit, 19-9-804.
Firefighters' unified retirement — amount of service retirement benefit, 19-13-704.
Volunteer Firefighters' Compensation Act — pension benefits, 19-17-404.

Firefighters' retirement — service pension, 19-18-602.
Police retirement — local funds — service retirement allowance, 19-19-501.
Teachers' retirement — allowance for superannuation retirement, 19-20-804.

19-3-905. Adjustment of benefit for certain members. The minimum retirement benefit payable to a vested member who has attained age 70 in service is an annuity of $40 per month.

History: En. 68-2004 by Sec. 32, Ch. 323, L. 1973; amd. Sec. 10, Ch. 128, L. 1975; amd. Sec. 13, Ch. 332, L. 1977; R.C.M. 1947, 68-2004; amd. Sec. 3, Ch. 196, L. 1989; amd. Sec. 70, Ch. 265, L. 1993.

Cross-References

Highway patrol retirement — supplemental benefits for certain retirees, 19-6-709.
Police retirement — statewide plan — supplement to certain benefits, 19-9-1007.
Police retirement — local funds — supplement to certain pensions, 19-19-506.

19-3-906. Early retirement benefit. (1) The amount of retirement benefit payable to a member following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 60 or upon completion of 30 years of service credit pursuant to 19-3-904.

(2) The early retirement benefit must be determined as prescribed in 19-3-904, with the exception that the benefit must be reduced as follows:

(a) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service; and

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service.

(3) The actuarial reduction provided for in this section must be adjusted for any additional service purchased under 19-3-513.

History: En. 68-2005 by Sec. 33, Ch. 323, L. 1973; R.C.M. 1947, 68-2005; amd. Sec. 7, Ch. 496, L. 1981; amd. Sec. 60, Ch. 370, L. 1987; amd. Sec. 3, Ch. 73, L. 1989; amd. Sec. 71, Ch. 265, L. 1993.

Cross-References

Judges' retirement — involuntary retirement benefit, 19-5-503.
Highway patrol retirement — involuntary retirement benefit, 19-6-503.
Sheriffs' retirement — early retirement option, 19-7-502.
Game wardens' and peace officers' retirement — early retirement benefit, 19-8-604.
Firefighters' retirement — partial service pension, 19-18-603.
Teachers' retirement — early retirement, 19-20-802.

19-3-907. Renumbered 19-3-520 by Code Commissioner, 1993.

19-3-908. Retirement incentive program — window of eligibility. (1) Except as provided in subsection (4), a person who is an active member on February 1, 1993, and who voluntarily terminates service or whose service is involuntarily terminated because of a reduction in force on or after June 25, 1993, but before January 1, 1994, and who is eligible for a normal service retirement under 19-3-901 or early retirement under 19-3-902 is entitled to the retirement incentive provided in subsection (2).

(2) (a) The employer of an eligible member under subsection (1) shall pay the total cost of purchasing up to 3 years of additional service that the member is qualified to purchase under 19-3-513.

(b) The department of revenue shall pay the cost of purchasing up to 3 years of additional service for qualifying county assessors and deputy assessors eligible under subsection (1) whose employing county has not elected for participation in the incentive program as provided in subsection (4).

(c) A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service provided in this section.

(3) An active member who is involuntarily terminated because of a reduction in force on or after March 1, 1993, but before June 25, 1993, and who, if the member had not been terminated, would have been eligible under subsection (1) for the retirement incentive is entitled to the

retirement incentive under subsection (2) if the member was, at the time of termination, eligible for normal service retirement under 19-3-901 or early retirement under 19-3-902 and retires on or after June 25, 1993.

(4) Subject to subsection (2)(b), a contracting employer's participation in the incentive program described in this section is optional. A contracting employer may elect to provide the incentive by filing with the board a written notice of election on or before June 1, 1993, and complying with rules adopted pursuant to subsection (6).

(5) County assessors and deputy assessors are eligible for the incentive program even if the employing county has not elected to participate in the incentive program.

(6) The board may allow an employer to pay the contributions required under subsection (2)(a) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403. The board shall adopt rules to implement the provisions of this section.

(7) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in a position covered by the public employees' retirement system or for 600 or more hours in a calendar year in a position covered under any other retirement system shall forfeit the additional service. The employer's contributions to purchase that member's additional service, minus any retirement benefits already paid, must be refunded to the employer. For purposes of this subsection, all agencies of the state, including the university system, are considered the same jurisdiction and other public employers contracting with the retirement system are each considered separate jurisdictions.

History: En. Sec. 1, Ch. 567, L. 1993; amd. Sec. 127, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 66, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 66 in (7) in first sentence after "jurisdiction for" inserted "960 or more hours in a calendar year in a position covered by the public employees' retirement system or for" and after "year" inserted "in a position covered under any other retirement system". Amendment effective March 16, 2001.

19-3-909. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Nonapplication of part to defined contribution plan.** Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 40, Ch. 471, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Part 10

Disability Retirement Benefits

Part Cross-References

Disability benefits — exclusion from income tax, 15-30-111.
Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Judges' retirement — disability retirement benefits, Title 19, ch. 5, part 6.
Highway patrol retirement — disability retirement benefits, Title 19, ch. 6, part 6.
Sheriffs' retirement — disability retirement benefits, Title 19, ch. 7, part 6.
Game wardens' and peace officers' retirement — disability retirement benefits, Title 19, ch. 8, part 7.
Police retirement — statewide plan — disability retirement benefits, Title 19, ch. 9, part 9.
Firefighters' unified retirement — disability retirement benefits, Title 19, ch. 13, part 8.
Teachers' retirement — disability retirement, Title 19, ch. 20, part 9.

19-3-1001. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(2).

19-3-1002. Eligibility for disability retirement. (1) Except as provided in subsections (2) and (3), a member entering service prior to February 24, 1991, who is not eligible for service or early retirement but has at least 5 years of membership service and has become disabled while an active member is eligible for disability retirement, as provided in 19-3-1008(1).

(2) An active member age 60 or older who has completed 5 years of membership service and has had a duty-related accident forcing the member to terminate employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive the member's eligibility for a service retirement in order to be eligible for disability retirement. The waiver is effective only upon approval by the board of the member's written application for disability retirement. The board shall determine whether a member has become disabled. The board may request any information on file with the state compensation insurance fund concerning any duty-related accident. If information is not available, the board may request and the state fund shall then provide an investigative report on the disabling accident.

(3) (a) A member in service on February 24, 1991, has a one-time election to be covered for disability purposes under the provisions of 19-3-1008(2). This election is irrevocable and must be made in writing by the member no later than December 31, 1991. Coverage under the provisions of 19-3-1008(2) commences on the date the completed written election is received by the board or its designated representative. To be eligible for disability benefits under the provisions of this part, a member must have completed 5 years of membership service and must have become disabled while an active member.

(b) An individual becoming a member after February 24, 1991, who has completed 5 years of membership service and has become disabled while an active member is covered for disability purposes under the provisions of 19-3-1008(2) or (3).

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(1); amd. Sec. 2, Ch. 311, L. 1983; amd. Sec. 56, Ch. 613, L. 1989; amd. Sec. 1, Ch. 49, L. 1991; amd. Sec. 72, Ch. 265, L. 1993; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 32, Ch. 99, L. 2001; amd. Sec. 2, Ch. 217, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 99 in (2) in second sentence after "member's" inserted "written"; in (3)(a) in third sentence after "completed" substituted "written election" for "election form"; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 217 at end of (3)(b) inserted reference to 19-3-1008(3). Amendment effective July 1, 2001.

Cross-References

Disability defined, 19-2-303.

Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.

19-3-1003. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(3).

19-3-1004. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(4).

19-3-1005. Application for disability retirement benefit. The board shall grant a disability retirement benefit to any member who has fulfilled the eligibility requirements of 19-3-1002 and filed the appropriate written application with the board. An application may be filed on a member's behalf by the head of the office or department in which the member is or was last employed, by any other person on behalf of the member, or by the board upon its own motion. The application must be filed within 4 months after the member's termination from service unless the member is disabled continuously from the date of termination from service to the date of the application.

History: En. 68-2102 by Sec. 35, Ch. 323, L. 1973; R.C.M. 1947, 68-2102(part); amd. Sec. 73, Ch. 265, L. 1993; amd. Sec. 32, Ch. 562, L. 1999; amd. Sec. 33, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at end of first sentence inserted "with the board", at end of second sentence deleted "may make the application", and at beginning of third sentence substituted "The application must be filed" for "Application must be made"; and made minor changes in style. Amendment effective March 21, 2001.

19-3-1006. Repealed. Sec. 39, Ch. 370, L. 1997.

History: En. 68-2102 by Sec. 35, Ch. 323, L. 1973; R.C.M. 1947, 68-2102(part); amd. Sec. 74, Ch. 265, L. 1993.

19-3-1007. Benefit for duty-related disability. (1) The retirement benefit payable to a member eligible for disability retirement for duty-related reasons and granted prior to July 1, 1977, is 50% of the member's highest average compensation.

(2) A retired member receiving a disability retirement benefit on July 1, 1977, who has previously been granted a duty-related disability under provisions in effect on June 30, 1977, is subject to the provisions of this section after July 1, 1977.

History: En. 68-2103 by Sec. 36, Ch. 323, L. 1973; amd. Sec. 7, Ch. 99, L. 1977; amd. Sec. 4, Ch. 241, L. 1977; R.C.M. 1947, 68-2103; amd. Sec. 55, Ch. 613, L. 1989; amd. Sec. 75, Ch. 265, L. 1993; amd. Sec. 34, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at end of (1) substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

19-3-1008. Benefit for disability. (1) The monthly amount of the retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(1) is the greater of subsection (1)(a) or (1)(b) as follows:

(a) 90% of one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service purchased under 19-3-513; or

(b) a retirement benefit equal to 25% of the member's highest average compensation.

(2) Except as provided in subsection (3), the monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) is a retirement benefit equal to one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service purchased under 19-3-513.

(3) The monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) who has at least 25 years of membership service is a retirement benefit equal to one-fiftieth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service purchased under 19-3-513.

(4) Subject to the provisions of part 11 of this chapter, a retired member receiving a disability retirement benefit on February 24, 1991, who has previously been granted a disability retirement benefit under the provisions of this section will continue to receive the monthly disability retirement benefit as calculated prior to February 24, 1991, subject to any postretirement or cost-of-living increases granted by the legislature.

History: En. 68-2104 by Sec. 37, Ch. 323, L. 1973; amd. Sec. 5, Ch. 241, L. 1977; amd. Sec. 14, Ch. 332, L. 1977; R.C.M. 1947, 68-2104; amd. Sec. 4, Ch. 73, L. 1989; amd. Sec. 4, Ch. 558, L. 1989; amd. Sec. 2, Ch. 49, L. 1991; amd. Sec. 76, Ch. 265, L. 1993; amd. Sec. 35, Ch. 99, L. 2001; amd. Sec. 3, Ch. 217, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 99 in three places substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

Chapter 217 at beginning of (2) inserted exception clause; inserted (3) concerning disability retirement for member with 25 years of membership service; and made minor changes in style. Amendment effective July 1, 2001.

19-3-1009 through 19-3-1014 reserved.

19-3-1015. Medical examination of disability retiree — cancellation and reinstatement. (1) The board may, in its discretion, require a disabled member to undergo a medical examination. The examination must be made by a physician or surgeon appointed by the board, at a place mutually agreed upon by the retired member and the board. Upon the basis of the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of either the position held by the member when the member retired or the position proposed to be assigned to the member. If the board determines the member is not incapacitated or if the member refuses to submit to a medical examination, the member's retirement benefit must be canceled.

(2) If the board determines that a disabled member should no longer be subject to medical review, the board may grant service retirement status to the member without recalculating the monthly benefit. The board shall notify the member in writing as to the change in status. If the disabled member disagrees with the board's determination, the member may file a written application with the board requesting that the board reconsider its action. The written

application for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), a member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

(b) A member who is employed by an employer terminates any right to reinstatement provided by this section.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the member's service is considered, for the purposes of 19-2-602, to have been discontinued coincident with the commencement of the member's retirement benefit.

History: En. 68-2201 by Sec. 38, Ch. 323, L. 1973; amd. Sec. 8, Ch. 99, L. 1977; R.C.M. 1947, 68-2201; amd. Sec. 1, Ch. 138, L. 1989; amd. Sec. 77, Ch. 265, L. 1993; Sec. 19-3-1102, MCA 1991; redes. 19-3-1015 by Code Commissioner, 1993; amd. Sec. 12, Ch. 412, L. 1995; amd. Sec. 17, Ch. 370, L. 1997; amd. Sec. 33, Ch. 562, L. 1999; amd. Sec. 36, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (2) in third sentence after "member may" substituted "file a written application with the board requesting that the board reconsider" for "make a written application to the board to request the board to reconsider" and in fourth sentence after "reconsideration" substituted "must be filed" for "must be made". Amendment effective March 21, 2001.

Cross-References

Judges' retirement — medical examination of disability retiree — cancellation of benefit, 19-5-612.

Highway patrol retirement — medical examination of disability retiree — cancellation of benefit, 19-6-612.

Sheriffs' retirement — medical examination of disability retiree — cancellation of benefit, 19-7-612.

Game wardens' and peace officers' retirement — medical examination of disability retiree — cancellation of benefit, 19-8-712.

Police retirement — statewide plan — reinstatement upon termination of benefit, 19-9-905.

Firefighters' unified retirement — medical examination of disability retiree — cancellation of benefit, 19-13-804.

Teachers' retirement — medical examination of disability retiree, 19-20-903.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-20-905.

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

19-3-1016. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Nonapplication of part to defined contribution plan.** Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 40, Ch. 471, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Part 11
Reemployment of Retired Members

Part Cross-References

Termination of membership and refunds, Title 19, ch. 2, part 6.

Reinstatement after withdrawal of contributions, 19-2-603.

19-3-1101. Renumbered 19-3-1501 by Code Commissioner, 1993.

19-3-1102. Renumbered 19-3-1015 by Code Commissioner, 1993.

19-3-1103. Disability benefit reduced by earnings. (1) (a) If the recipient of a disability retirement benefit engages in a gainful occupation during any month other than in a position covered by the retirement system, the amount of the recipient's retirement benefit for that month must be reduced to an amount that, when added to the compensation earned by the recipient in that occupation, does not exceed the amount of the recipient's monthly compensation at the time of the recipient's retirement.

(b) The board shall annually adjust the recipient's monthly compensation as it was at the time of retirement by an inflationary factor if the recipient has been receiving a disability retirement benefit for more than 36 consecutive months.

(2) Benefit adjustments granted by the legislature may not be included in calculations required under this section.

History: En. 68-2202 by Sec. 39, Ch. 323, L. 1973; amd. Sec. 4, Ch. 190, L. 1974; R.C.M. 1947, 68-2202; amd. Sec. 8, Ch. 496, L. 1981; amd. Sec. 1, Ch. 23, L. 1987; amd. Sec. 89, Ch. 265, L. 1993; amd. Sec. 34, Ch. 562, L. 1999; amd. Sec. 37, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1)(b) at beginning substituted "The board shall annually adjust" for "The board, upon the written application of a recipient of a disability retirement benefit, may adjust"; deleted former (2) that read: "(2) At the request of a recipient of a disability retirement benefit who is age 60 or older, the board may grant service retirement status to the recipient without recalculating the recipient's monthly benefit"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Teachers' retirement — adjustment of disability allowance, 19-20-904.

19-3-1104. Cancellation of disability retirement benefit upon reemployment. A person receiving a disability retirement benefit who becomes an employee is considered reinstated to service from retirement, and the person's disability retirement benefit must be canceled.

History: En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(part); amd. Sec. 86, Ch. 265, L. 1993; amd. Sec. 104, Ch. 42, L. 1997; amd. Sec. 18, Ch. 370, L. 1997.

Cross-References

Teachers' retirement — cancellation of allowance and restoration of membership, 19-20-905.

19-3-1105. Benefit upon second retirement. (1) Except as otherwise expressly provided by law, a member with at least 2 years of service credit accrued after reemployment must receive the benefit of provisions enacted after the member's initial retirement, but only with respect to the service credit earned after reemployment.

(2) Upon retirement subsequent to a cancellation under 19-3-1104, a member must receive a recalculated benefit as provided in 19-3-904. The recalculated benefit is based on service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.

History: En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(part); amd. Sec. 87, Ch. 265, L. 1993; amd. Sec. 38, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 inserted (1) extending initial retirement benefits enacted after initial retirement of member with at least 2 years of service credit accrued after reemployment; deleted former (2) that read: "(2) Except as otherwise expressly provided by law, the member must receive the benefit of provisions enacted subsequent to initial retirement only if the member accrues at least 2 years of service credit subsequent to reinstatement and then only with respect to the service credit"; and made minor changes in style. Amendment effective March 21, 2001.

19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — exception. (1) A retired member under 65 years of age who is receiving a service retirement benefit may return to employment covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced $1 for each $1 earned after working 960 hours in that calendar year.

(2) A retiree 65 years of age or older who returns to employment covered by the retirement system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar

year an amount that, when added to the retiree's current annual retirement benefits, will not exceed the member's annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced $1 for each $1 of compensation earned in covered service beyond the applicable limitation during that calendar year.

(3) A retiree returning to employment covered by the retirement system and the returning employee's employer shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any month after retirement.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

(5) A retired member 70 ½ years of age or older who returns to employment covered by the retirement system is not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3).

History: En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(2); amd. Sec. 9, Ch. 496, L. 1981; amd. Sec. 2, Ch. 303, L. 1985; amd. Sec. 2, Ch. 275, L. 1991; amd. Sec. 88, Ch. 265, L. 1993; amd. Sec. 1, Ch. 460, L. 1995; amd. Sec. 35, Ch. 562, L. 1999; amd. Sec. 3, Ch. 66, L. 2001; amd. Sec. 39, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 66 in (1) in three places substituted "960" for "640"; and in (2) near beginning after "subject to the" deleted "640-hour". Amendment effective March 16, 2001.

Chapter 99 in (2) near middle of first sentence after "annualized" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

Cross-References

Teachers' retirement — adjustment of disability allowance, 19-20-904.

19-3-1107. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 631, L. 1985.

19-3-1108. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 179, L. 1987.

19-3-1109. Renumbered 19-3-1601 by Code Commissioner, 1993.

19-3-1110. Renumbered 19-3-1602 by Code Commissioner, 1993.

19-3-1111. Renumbered 19-3-1603 by Code Commissioner, 1993.

19-3-1112. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Nonapplication of part to defined contribution plan.** Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 40, Ch. 471, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Part 12

Survivorship Benefits and Death Payments

Part Cross-References

Beneficiaries, Title 19, ch. 2, part 8.
Designation of beneficiary, 19-2-801.
Limitations on payment of benefits to person causing member's death or disability, 19-2-804.
Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Teachers' retirement — death benefits, Title 19, ch. 20, part 10.

19-3-1201. Eligibility for death payments. Upon receipt of a written application filed with the board by a designated beneficiary, the board shall grant a death benefit to the designated beneficiary of any member who dies:

(1) while in service;

(2) within 6 months after the discontinuance of service but before retirement;

(3) while a recipient of a disability retirement benefit, if the benefit has been in effect less than 6 months; or

(4) while disabled, if the member has been continuously disabled since discontinuance of the member's service but is not receiving a disability retirement benefit.

History: En. 68-2301 by Sec. 42, Ch. 323, L. 1973; R.C.M. 1947, 68-2301; amd. Sec. 4, Ch. 196, L. 1989; amd. Sec. 78, Ch. 265, L. 1993.

19-3-1202. Amount of lump-sum death payment. The amount of payment to be made to those eligible for death payments is the sum of subsections (1), (2), and (3) as follows:

(1) the member's accumulated contributions;

(2) an amount equal to one-twelfth of the compensation received by the member during the last 12 months of compensation multiplied by the smaller of six or the number of years of the member's service credit; and

(3) the accumulated regular interest on the amounts in subsections (1) and (2) to the first day of the month in which the payment is made.

History: En. 68-2302 by Sec. 43, Ch. 323, L. 1973; R.C.M. 1947, 68-2302; amd. Sec. 1, Ch. 210, L. 1981; amd. Sec. 57, Ch. 613, L. 1989; amd. Sec. 79, Ch. 265, L. 1993.

19-3-1203. Election of optional death annuity. The designated beneficiary of a member may elect, by filing a written application with the board, to have the lump-sum death payment paid in an actuarially equivalent form, subject to rules that the board may adopt. The annuity payments are not subject to increases that may be granted to other monthly retirement benefits.

History: En. 68-2303 by Sec. 44, Ch. 323, L. 1973; R.C.M. 1947, 68-2303; amd. Sec. 80, Ch. 265, L. 1993; amd. Sec. 40, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 near middle of first sentence after "elect" inserted "by filing a written application with the board" and deleted former second sentence that read: "Election of an optional death annuity must be by written application"; and made minor changes in style. Amendment effective March 21, 2001.

19-3-1204. Survivorship benefit elected by beneficiary. (1) A designated beneficiary eligible to receive a lump-sum death payment may instead elect a survivorship benefit by filing a written application with the board, if all of the following conditions are met:

(a) The member on behalf of whom the death benefit is payable had completed 5 years of membership service.

(b) The designated beneficiary is a natural person.

(c) The designated beneficiary elects the survivorship benefit within 90 days of receipt of notice from the board that the designated beneficiary is eligible to receive the lump-sum death payment.

(2) The designated beneficiary of a vested member may, by filing a written application with the board, elect to receive a survivorship benefit in lieu of a lump-sum payment of the member's account.

(3) (a) If the designated beneficiary is a minor, the custodian designated in 19-2-803 may, on the minor's behalf, file a written application with the board.

(b) If an application is not filed on the minor's behalf and no payment has been made, the designated beneficiary may file a written application upon reaching the age of majority. For the purposes of this subsection (3)(b), the survivorship benefit provided for in 19-3-1205 must be calculated as if the member had died on the last day of the month before the month in which the application was filed.

History: En. 68-2304 by Sec. 45, Ch. 323, L. 1973; amd. Sec. 7, Ch. 190, L. 1974; amd. Sec. 3, Ch. 89, L. 1977; amd. Sec. 10, Ch. 99, L. 1977; amd. Sec. 7, Ch. 241, L. 1977; R.C.M. 1947, 68-2304; amd. Sec. 2, Ch. 153, L. 1985; amd. Sec. 5, Ch. 196, L. 1989; amd. Sec. 81, Ch. 265, L. 1993; amd. Sec. 36, Ch. 562, L. 1999; amd. Sec. 41, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) near middle of introductory clause after "payment may" substituted "instead elect a survivorship benefit by filing a written application with the board" for "elect, by written application, a survivorship benefit instead"; in (2) after "member may" inserted "by filing a written application with the board"; and made minor changes in style. Amendment effective March 21, 2001.

19-3-1205. Amount of survivorship benefit. The survivorship benefit payable to a member's designated beneficiary is the actuarial equivalent of:

(1) the accrued portion of the early retirement benefit pursuant to 19-3-906 that would have been payable to the member commencing at age 50 if the member had not attained age 50 or earned 25 years of service credit at the time of death;

(2) if the deceased member had attained age 50 or earned 25 years of service credit at the time of death, the early retirement benefit that would have been payable to the member if the member had retired immediately prior to death; or

(3) if the deceased member had attained age 60 or earned 30 years of service credit at the time of death, the service retirement benefit that would have been payable to the member if the member had retired immediately prior to death.

History: En. 68-2305 by Sec. 46, Ch. 323, L. 1973; amd. Sec. 8, Ch. 190, L. 1974; R.C.M. 1947, 68-2305; amd. Sec. 82, Ch. 265, L. 1993; amd. Sec. 13, Ch. 412, L. 1995; amd. Sec. 105, Ch. 42, L. 1997.

19-3-1206 through 19-3-1209 reserved.

19-3-1210. Death payments to designated beneficiaries of retired members. If a retired member dies without designating a contingent annuitant under 19-3-1501, the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

History: En. Sec. 83, Ch. 265, L. 1993; amd. Sec. 37, Ch. 562, L. 1999.

Cross-References

Designation of beneficiary, 19-2-801.

19-3-1211. Refund when former member dies after transferring to another system. The accumulated contributions of a member who dies after becoming a member of any other system described in 19-3-403(4) and before receiving the member's accumulated contributions must be paid to the designated beneficiary.

History: En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(8)(b); amd. Sec. 84, Ch. 265, L. 1993; Sec. 19-3-404, MCA 1991; redes. 19-3-1211 by Code Commissioner, 1993.

19-3-1212. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Nonapplication of part to defined contribution plan.** Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 40, Ch. 471, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Part 13
Beneficiaries
(Renumbered and Repealed)

Part Compiler's Comments

Sections Renumbered and Repealed:

19-3-1301. Renumbered 19-2-801. Sec. 238, Ch. 265, L. 1993.
19-3-1302. Renumbered 19-2-802. Sec. 238, Ch. 265, L. 1993.
19-3-1303. Repealed. Sec. 12, Ch. 496, L. 1981.
19-3-1304. Renumbered 19-2-803. Sec. 238, Ch. 265, L. 1993.
19-3-1305. Renumbered 19-2-804. Sec. 238, Ch. 265, L. 1993.

Histories of Repealed Sections:
19-3-1303. En. 68-2401 by Sec. 47, Ch. 323, L. 1973; R.C.M. 1947, 68-2401(3).

Part 14
Management of Allowance Payments (Renumbered. Sec. 238, Ch. 265, L. 1993)

Part Compiler's Comments
Sections Renumbered:
19-3-1401. Renumbered 19-2-901.
19-3-1402. Renumbered 19-2-902.
19-3-1403. Renumbered 19-2-903.
19-3-1404. Renumbered 19-2-904.

Part 15
Optional Forms of Benefit Payments

Part Cross-References
Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.

19-3-1501. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit to a contingent annuitant as follows:

(a) option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If a member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, then the election is void.

(5) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit that became effective before October 1, 1999, may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of the dissolution settlement or family law order.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change.

(6) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary was not granted the right to receive the optional retirement benefit as part of the dissolution settlement or a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the dissolution settlement or family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (6) must be increased by the value of any postretirement adjustments received by the member since the effective date of the member's retirement.

(7) A written application pursuant to subsection (5) or (6) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

History: En. 68-2203 by Sec. 40, Ch. 323, L. 1973; amd. Sec. 5, Ch. 190, L. 1974; amd. Sec. 9, Ch. 99, L. 1977; amd. Sec. 6, Ch. 241, L. 1977; amd. Sec. 15, Ch. 332, L. 1977; R.C.M. 1947, 68-2203; amd. Sec. 1, Ch. 527, L. 1985; amd. Sec. 85, Ch. 265, L. 1993; Sec. 19-3-1101, MCA 1991; redes. 19-3-1501 by Code Commissioner, 1993; amd. Sec. 1, Ch. 217, L. 1999; amd. Sec. 38, Ch. 562, L. 1999; amd. Sec. 42, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) near end of introductory clause after "annuitant" deleted "whom the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits"; in (1)(c) after "amounts" inserted "payable to a contingent annuitant"; in (2) at beginning of first sentence substituted "The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board" for "Election of an optional retirement benefit must be by written application filed" and inserted second sentence requiring identification of a contingent annuitant on the application; in (4) after "member's" substituted "written application electing or changing an election" for "election or changed election" and at end after "void" deleted "and the death is considered as that of a member before retirement"; at beginning of (5)(a) substituted "Upon filing a written application with the board" for "Upon written application to the board"; in (6)(a) near beginning after "that is" substituted "initially effective on or after October 1, 1999" for "effective after October 1, 1999"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Judges' retirement — optional forms of benefits, 19-5-701.
Sheriffs' retirement — optional forms of benefits, 19-7-1001.
Game wardens' and peace officers' retirement — optional forms of benefits, 19-8-801.
Teachers' retirement — optional allowances, 19-20-702.

19-3-1502. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Nonapplication of part to defined contribution plan.** Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 40, Ch. 471, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Part 16

Postretirement Benefits and Benefit Increases

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Highway patrol retirement — minimum benefits and benefit increases, Title 19, ch. 6, part 7.
Sheriffs' retirement — minimum benefits and benefit increases, Title 19, ch. 7, part 7.
Police retirement — statewide plan — minimum benefits and benefit increases, Title 19, ch. 9, part 10.
Firefighters' unified retirement — minimum benefits and benefit increases, Title 19, ch. 13, part 10.

19-3-1601. Repealed. Sec. 38, Ch. 287, L. 1997.

History: En. Sec. 1, Ch. 115, L. 1989; amd. Sec. 90, Ch. 265, L. 1993; Sec. 19-3-1109, MCA 1991; redes. 19-3-1601 by Code Commissioner, 1993.

19-3-1602. Repealed. Sec. 38, Ch. 287, L. 1997.

History: En. Sec. 2, Ch. 115, L. 1989; amd. Sec. 91, Ch. 265, L. 1993; Sec. 19-3-1110, MCA 1991; redes. 19-3-1602 by Code Commissioner, 1993.

19-3-1603. Repealed. Sec. 38, Ch. 287, L. 1997.

History: En. Sec. 3, Ch. 115, L. 1989; amd. Sec. 92, Ch. 265, L. 1993; Sec. 19-3-1111, MCA 1991; redes. 19-3-1603 by Code Commissioner, 1993.

19-3-1604. Ad hoc cost-of-living increase. A member of the retirement system who retired on or before July 1, 1991, or the member's beneficiary is entitled to a 5% increase in the monthly service, disability, or survivorship benefit paid to the member or the member's beneficiary.

History: En. Sec. 1, Ch. 367, L. 1993.

19-3-1605. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 3% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made.

(4) The board shall adopt rules to administer the provisions of this section.

History: En. Sec. 1, Ch. 287, L. 1997; amd. Sec. 39, Ch. 562, L. 1999; amd. Sec. 1, Ch. 62, L. 2001; amd. Sec. 3, Ch. 149, L. 2001; amd. Sec. 1, Ch. 309, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-3-1606. Purchasing power adjustment. Beginning with the July 2001 benefit, the board shall provide an ad hoc benefit increase to retired members and beneficiaries of the retirement system receiving a monthly retirement benefit. The ad hoc benefit increase must be calculated by the board actuary and approved by the board. The benefit increase must be designed to bring the benefit recipient's current benefit up to a level estimated to be no less than 75% of the purchasing power of the original recipient's initial monthly benefit. Purchasing power must be calculated considering the date that the first benefit was paid to the original benefit recipient, applicable benefit increases since that date, and a comparison with the consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor since the date the first benefit was paid to the original benefit recipient.

History: En. Sec. 4, Ch. 149, L. 2001.

Compiler's Comments

Effective Date: Section 22, Ch. 149, L. 2001, provided that this section is effective on passage and approval. Approved March 29, 2001.

19-3-1607. Nonapplication of part to defined contribution plan. Unless otherwise explicitly provided in this part, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 13, Ch. 490, L. 2001.

Compiler's Comments

Effective Date: Section 43(1), Ch. 490, L. 2001, provided that this section is effective July 1, 2001.

Parts 17 through 20 reserved

Part 21
Defined Contribution Plan

19-3-2101. Definitions. Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) "Member" means a person with a retirement account in the defined contribution plan.

(2) "Optional retirement program" means the retirement plan established by the board of regents under chapter 21 of this title.

(3) "Plan" or "defined contribution plan" means the defined contribution retirement plan.

History: En. Sec. 42, Ch. 471, L. 1999; amd. Sec. 14, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 490 in definition of member near beginning after "means" substituted "a person" for "an employee". Amendment effective July 1, 2001.

19-3-2102. *(Subsection (1) effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Defined contribution plan established — assets to be held in trust — contracted services.** (1) The board shall establish within the public employees' retirement system a defined contribution plan in accordance with the provisions of this part. The plan must be established as a pension plan for the exclusive benefit of members and their beneficiaries and as a "qualified governmental plan" pursuant to section 401(a) of the Internal Revenue Code and its implementing regulations. Retirement accounts must be established for each member of the defined contribution plan. Assets of the plan must be held in trust. The plan is established in addition to any retirement, pension, deferred compensation, or other benefit plan administered by the state or a political subdivision.

(2) The board may contract for plan administration and use a competitive bidding process when contracting for consulting, educational, investment, recordkeeping, or other services for the plan.

History: En. Sec. 43, Ch. 471, L. 1999; amd. Sec. 15, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 490 in (1) in second sentence near middle after "and as a "qualified" inserted "governmental"; in (2) near beginning after "The board" substituted "may" for "shall"; and deleted former (3) that read: "(3) The board shall contract for a qualified consultant to assist in preparation of the request for bid or request for proposal for plan services." Amendment effective July 1, 2001.

Effective Date — Contingent Effective Date: Section 79(2), Ch. 471, L. 1999, provided that subsections (2) and (3) of this section are effective on passage and approval. Approved April 27, 1999.

Section 79(4), Ch. 471, L. 1999, provided that subsection (1) of this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

19-3-2103. Legislative intent. It is the intent of the legislature that, in implementing and administering the defined contribution plan:

(1) changes to current administrative processes and the impact of those changes on employers be minimized to the extent possible;

(2) the administrative structure for the plan be configured in an economical and efficient manner;

(3) administration and services for the plan be contracted out to the extent possible, but that the board provide for the diligent oversight of the contracts;

(4) reasonable participant services be provided for and that fees be commensurate with the services;

(5) lines of communication and responsibilities be clearly established so that employers or their personnel and payroll officers do not advise members about plan choices or investment alternatives; and

(6) employers be encouraged to provide paid time for employees to attend educational programs sponsored by the board pursuant to 19-3-112.

History: En. Sec. 44, Ch. 471, L. 1999.

19-3-2104. Board powers and duties — rulemaking. (1) The board has the powers and shall perform the duties regarding the defined contribution plan as provided in 19-2-403, as applicable. The board may also exercise the powers and shall perform the duties provided in this chapter.

(2) The board shall, in accordance with the Montana Administrative Procedure Act, adopt rules necessary for the implementation of this part and other applicable sections in chapters 2 and 3 of this title, including rules concerning the following:

(a) matters necessary for the treatment of the plan as a qualified plan under applicable sections of the Internal Revenue Code;

(b) the treatment of dormant or inactive accounts;

(c) the security and privacy of information maintained by the board concerning a member's investments, as required by applicable law;

(d) minimum asset, reserve, insurance, or other security requirements intended to ensure the solvency of a contractor used by the board for investment services; and

(e) the commencement of benefits in the plan pursuant to this part and as provided in 19-2-908.

History: En. Sec. 45, Ch. 471, L. 1999.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-3-2105. Administrative expenses and fees. (1) The board may establish a fund within the defined contribution plan for paying the plan's administrative expenses.

(2) The board may:

(a) assess fees to pay the reasonable administrative costs of the plan; and

(b) negotiate with a vendor or vendors for vendor reimbursement of board administrative expenses for the plan.

(3) All fees assessed must be fully disclosed to plan members and treated as public information.

(4) Costs for the board to provide for contract oversight are included as part of the administrative expenses of the plan.

History: En. Sec. 46, Ch. 471, L. 1999.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

19-3-2106. Limited contract right. The statutory provisions governing the defined contribution plan and the optional retirement program are subject to amendment by the legislature. Employees choosing the defined contribution plan or the optional retirement program pursuant to this part do not have a contract right to the specific terms and conditions specified in statute on the date the employee's choice becomes effective.

History: En. Sec. 16, Ch. 490, L. 2001.

Compiler's Comments

Effective Date: Section 43(1), Ch. 490, L. 2001, provided that this section is effective July 1, 2001.

19-3-2107 through 19-3-2110 reserved.

19-3-2111. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Plan membership — written election required — failure to elect — effect of election.** (1) Except as otherwise provided in this part:

(a) (i) a member who is an active member of the defined benefit plan on the date that the defined contribution plan becomes effective may, within 12 months after that date, elect to transfer to and become a member of the plan;

(ii) a member who was an inactive member of the defined benefit plan on the date that the defined contribution plan becomes effective and who is rehired into covered employment after the plan effective date may, within 12 months after the member's rehire date, elect to transfer to and become a member of the plan;

(b) a member who is initially hired into covered employment on or after the date that the defined contribution plan becomes effective may, within 12 months of the member's hire date, elect to become a member of the plan.

(2) (a) Elections made pursuant to this section must be made on a form prescribed by the board.

(b) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(c) An election under this section, including the default election pursuant to subsection (2)(b), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(c) does not prohibit a new election after an employee has terminated membership in either plan and returned to covered employment.

(3) A member in either the defined benefit plan or the defined contribution plan who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(4) A system member may not simultaneously be a member of the defined benefit plan and the defined contribution plan and must be a member of either the defined benefit plan or the defined contribution plan. A period of service may not be credited in more than one retirement plan within the system.

(5) The provisions of this part do not prohibit the board from adopting rules to allow an employee to elect the defined contribution plan from the first day of covered employment.

(6) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the defined contribution plan unless the order is modified to apply under the defined contribution plan.

History: En. Sec. 47, Ch. 471, L. 1999; amd. Sec. 17, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 490 in (5) near end substituted "from the first day" for "on the first day"; and in (6) at end after "defined contribution plan" deleted "or, for university employees making an election pursuant to 19-3-2112, the optional retirement program". Amendment effective July 1, 2001.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-3-2112. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Plan choices for members employed by university system — amount available to transfer — effect on rights.** (1) If an employee of the Montana university system is eligible to make an election under this part to transfer to the defined contribution plan, the employee may, instead of electing the defined contribution plan, elect to transfer membership to the university system's optional retirement program provided for under chapter 21 of this title.

(2) Except as otherwise provided in this part, an election to transfer to the optional retirement program must be made in accordance with the following provisions:

(a) (i) A university employee who is an active member of the defined benefit plan on the effective date of the defined contribution plan may, within 12 months after that date, elect to transfer to and become a member of the optional retirement program.

(ii) A university employee who was an inactive member of the defined benefit plan on the effective date of the defined contribution plan and who is hired or rehired into covered employment with the university system after that date may, within 12 months after the member's hire or rehire date, elect to transfer to and become a member of the optional retirement program.

(iii) An employee who is initially hired into covered employment with the university system on or after the effective date of the defined contribution plan may, within 12 months of the member's hire date, elect to become a member of the optional retirement program.

(b) Elections made pursuant to this section must be made on a form prescribed by the board.

(c) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(d) An election under this section, including the default election pursuant to subsection (2)(c), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(d) does not prohibit a new election after an employee has terminated membership in the optional retirement program and returned to employment in a position covered under the system.

(e) A member in either the defined benefit plan or the optional retirement program who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(f) A university employee in a position covered under the system may not simultaneously be a member of more than one retirement plan under this title, but must be a member of the defined benefit plan, the defined contribution plan, or the optional retirement program as provided by applicable provisions of this title. The same period of service may not be credited in more than one retirement system or plan.

(g) The provisions of this part do not prohibit the board from adopting rules to allow an eligible employee to elect the optional retirement program from the first day of covered employment.

(h) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the optional retirement program unless the order is modified to apply under the optional retirement program.

(3) For an employee electing to transfer to the optional retirement program, the board shall transfer to the optional retirement program the amount that the employee would have been able to transfer to the defined contribution plan under 19-3-2114.

(4) An election to become a member of the optional retirement program pursuant to this section is a waiver of all rights and benefits under the public employees' retirement system.

History: En. Sec. 48, Ch. 471, L. 1999; amd. Sec. 18, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 490 in (1) near beginning after "Montana university system" deleted "as provided for in 20-1-101" and near middle after "instead of electing the" substituted "defined contribution plan, elect to transfer" for "plan, make a one-time irrevocable election on a form prescribed by the board to transfer"; inserted (2) regarding election to transfer to optional retirement program; and made minor changes in style. Amendment effective July 1, 2001.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

19-3-2113. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Reinstatement of plan membership — purchase of prior service in defined benefit plan.** (1) (a) A participant who terminates membership in the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment in less than 24 months shall become a member of the plan that the member last selected and is not eligible for a new plan choice election.

(b) A participant who terminated membership in either the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment after 24 months or more is eligible to make a plan choice election as though initially hired as provided for in 19-3-2111(1)(b).

(2) (a) An employee who returns to covered employment after terminating membership in the defined benefit plan, who is eligible to make a plan choice, and who elects to join the defined benefit plan may reinstate prior membership service as provided in 19-2-603.

(b) An employee who returns to covered employment after terminating membership in the defined contribution plan or the optional retirement program, who is eligible to make a plan choice, and who elects to join the defined benefit plan may purchase prior membership service by paying to the board the full actuarial cost of the service as of the latest actuarial valuation of the defined benefit plan. The employee may not purchase membership service under this section in excess of the employee's length of service as a member of the defined contribution plan or the optional retirement program.

History: En. Sec. 49, Ch. 471, L. 1999; amd. Sec. 19, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 490 in (1)(a) at beginning substituted "A participant who terminates" for "An employee who terminated" and near middle after "who returns to covered employment" substituted "in less than 24 months" for "after a break in service of less than 24 consecutive months"; in (1)(b) at beginning substituted "A participant" for "Except as provided in subsection (2), an employee" and near middle after "returns to covered employment" substituted "after 24 months" for "after a break in service of 24 consecutive months"; deleted former (2) that read: "(2) (a) An employee who returns to covered employment after terminating plan membership in the defined contribution plan or the optional retirement program shall return to the plan previously selected if the employee has accessed money derived from the employee's former retirement account by:

(i) receiving a lump-sum distribution of the member's former retirement account, unless the distribution was forced pursuant to 19-3-2126(1)(b);

(ii) receiving a lump-sum distribution from an account outside the defined contribution plan that has at any time received a transfer of funds from the member's former retirement account or any account to which the member has transferred funds from a former retirement account; or

(iii) receiving a regular benefit, payment, or distribution from an account outside the defined contribution plan in which there is money from the member's former retirement account.

(b) For the purposes of this subsection (2), "retirement account" also includes an employee's account under the optional retirement program"; and made minor changes in style. Amendment effective July 1, 2001.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

19-3-2114. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Amount available to transfer.** (1) (a) For an employee who was a system member on the day before the effective date of the defined contribution plan and who elects to transfer to the plan, the board shall transfer from the defined benefit plan to the member's retirement account the employee's contributions and the percentage of the employer's contributions specified in subsection (1)(b), plus 8% compounded annual interest on the total of the transferred employee and employer contributions.

(b) Based on the contribution amount historically available to pay unfunded liabilities in the defined benefit plan and the transferring member's years of service, the percentage of the employer contributions that may be transferred are as follows:

Years of service	Percentage of employer contributions available to transfer
Less than 5 years	65.53%
5 to 9 years	58.59%
10 to 14 years	55.26%
15 to 19 years	55.42%
20 or more years	57.53%

(2) For an employee hired on or after the effective date of the defined contribution plan who elects to become a member of the plan, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been

credited to the member's account pursuant to 19-3-2117 had the employee become a plan member on the employee's hire date, plus 8% compounded annual interest.

History: **En. Sec. 50, Ch. 471, L. 1999; amd. Sec. 20, Ch. 490, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 490 in (1)(a) near end after "on the total of the" inserted "transferred"; and in (2) at end after "the employee's hire date" substituted "plus 8% compounded annual interest" for "plus interest credited at the actuarially assumed rate of return on the defined benefit plan assets as of the plan's latest actuarial valuation". Amendment effective July 1, 2001.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

19-3-2115. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Transfers or rollovers into plan — service transfers — membership credit for purposes of vesting.** (1) (a) Except as provided in subsection (2), the board shall accept the rollover of contributions and the income on those contributions from another qualified plan to the member's vested account.

(b) To transfer service from another retirement system in this title, an employee must be a member of the defined benefit plan. The member must receive membership service and service credit for the service the member transfers. The transferring member may, within 12 months after joining the defined benefit plan, elect to become a member of the defined contribution plan. The transferred service may be used for purposes of vesting in the defined contribution plan pursuant to 19-3-2116.

(2) (a) After-tax money may not be transferred or rolled over to a retirement account unless the money was contributed to the system's defined benefit plan on an after-tax basis.

(b) To the extent that the transfer or rollover is disallowed under the Internal Revenue Code provisions in effect as of the calendar year immediately preceding the date of the transfer or rollover, a member may not transfer or rollover to a retirement account contributions made under sections 403(b) and 457 of the Internal Revenue Code.

History: **En. Sec. 51, Ch. 471, L. 1999; amd. Sec. 21, Ch. 490, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 490 in (1)(a) near middle after "the board shall accept" substituted "the rollover of contributions and the income on those contributions" for "the transfer or rollover of assets" and at end substituted "vested account" for "retirement account" and deleted former last sentence that read: "If a member is transferring assets from another plan provided for in this title, the member must, for the purposes of becoming vested pursuant to 19-3-2116, receive credit for the employee's prior membership service under that plan"; inserted (1)(b) regarding transfer of service from another retirement system; and made minor changes in style. Amendment effective July 1, 2001.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

19-3-2116. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Vesting — mandatory termination of membership — forfeitures.** (1) A member is fully vested with the member's contributions and the income on those contributions from the date that the employee becomes a member of the plan, but is not considered a vested member unless the member meets the criteria under subsection (2).

(2) A member is not vested with the employer's contributions and the income on those contributions and does not attain the status of a vested member until the member has a total of 5 years of membership service under the system.

(3) A member who terminates covered employment before becoming a vested member shall terminate plan membership by removing from the plan the member's entire vested account balance as provided in 19-3-2123. The employer contributions and income on the

employer's contributions in the member's retirement account are forfeited and must be allocated as provided in 19-3-2117.

History: En. Sec. 52, Ch. 471, L. 1999; amd. Sec. 22, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 490 in (1) near end after "a vested member" deleted "as defined in 19-2-303"; in (3) in first sentence near middle after "the member's entire" inserted "vested"; and made minor changes in style. Amendment effective July 1, 2001.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

19-3-2117. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Allocation of contributions and forfeitures.** (1) Each plan member's retirement account must be credited with the employee contributions made under 19-3-315.

(2) Subject to adjustment by the board as provided in 19-3-2121, beginning on the plan's effective date, of the employer contributions under 19-3-316, an amount equal to:

(a) 4.19% of compensation must be allocated to the member's retirement account;

(b) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate; and

(c) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(c).

(3) Subject to adjustment by the board pursuant to 19-3-2121(6) and beginning on the plan's effective date, of the employer contributions under 19-3-316, 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141.

(4) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the plan's administrative expenses, including startup expenses. *(Terminates on occurrence of contingency—sec. 16, Ch. 423, L. 2001.)*

19-3-2117. *(Effective on occurrence of contingency)* **Allocation of contributions and forfeitures.** (1) Each plan member's retirement account must be credited with the employee contributions made under 19-3-315.

(2) Subject to adjustment by the board as provided in 19-3-2121, beginning on the plan's effective date, of the employer contributions under 19-3-316, an amount equal to:

(a) 4.49% of compensation must be allocated to the member's retirement account;

(b) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate; and

(c) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(c).

(3) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the plan's administrative expenses, including startup expenses.

History: En. Sec. 53, Ch. 471, L. 1999; amd. Secs. 5, 14(2)(a), Ch. 423, L. 2001; amd. Sec. 23, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section — Coordination: Pursuant to sec. 14(2)(a), Ch. 423, L. 2001, a coordination instruction, the amendments to this section made by sec. 5, Ch. 423, L. 2001, were replaced as follows: in version effective on occurrence of contingency or July 1, 2002, at end of (2) inserted "an amount equal to"; at beginning of (2)(a) substituted "4.19%" for "4.49%"; inserted (2)(c) requiring allocation of 0.04% of compensation to education fund; inserted (3) requiring allocation of 0.3% of compensation to long-term disability plan trust fund; in (4) at end of second sentence substituted "the plan's administrative expenses, including startup expenses" for "the employer contributions obligation provided under subsection (2)(a) of this section in lieu of direct contributions by the employer and shall increase the contribution amount under subsection (2)(b) of this section by the amount of the forfeitures used in lieu of the employer contributions"; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 490 in (2) in introductory clause at end after "contributions under 19-3-316" inserted "an amount equal to"; inserted (2)(c) regarding allocation to the education fund; in (4) in version effective on occurrence of contingency or

July 1, 2002, and in (3) in version effective on occurrence of contingency in second sentence at end after "19-3-2116 to meet" substituted "the plan's administrative expenses, including startup expenses" for "the employer contributions obligation provided under subsection (2)(a) of this section in lieu of direct contributions by the employer and shall increase the contribution amount under subsection (2)(b) of this section by the amount of the forfeitures used in lieu of the employer contributions"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier."

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void."

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

19-3-2118 through 19-3-2120 reserved.

19-3-2121. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Determination and adjustment of plan choice rate and contribution allocations.** (1) The board shall periodically review the sufficiency of the plan choice rate and shall adjust the allocation of contributions under 19-3-2117 as specified in this section. The board shall collect and maintain the data necessary to comply with this section.

(2) The plan choice rate set in 19-3-2117(2)(b) must be adjusted as provided in this section, taking into account:

(a) as determined under subsection (3), the change in the normal cost contribution rate in the defined benefit plan that is the result of member selection of the defined contribution plan; and

(b) as determined under subsection (4), the sufficiency of the plan choice rate to actuarially fund the defined contribution plan member's appropriate share of the defined benefit plan's unfunded liabilities.

(3) The change in the normal cost contribution rate must be an amount equal to the difference between the normal cost contribution rate in the defined benefit plan that would have resulted if all system members remained in the defined benefit plan and the normal cost contribution rate in the defined benefit plan for the actual members of the defined benefit plan, multiplied by the covered payroll of members in the defined benefit plan, divided by the covered payroll of members in the defined contribution plan. The measurements under this subsection must be based on the defined benefit plan in effect on the effective date of the defined contribution plan until the board determines that the defined benefit plan has been amended in a manner that significantly affects plan choices available to system members. After a board determination that the defined benefit plan has been significantly changed, the measurements in this subsection with respect to members entering the system after the significant change must be made on the basis of the defined benefit plan, as amended.

(4) The sufficiency of the plan choice rate to actuarially fund the appropriate share of the defined benefit plan's unfunded liabilities must be determined as follows:

(a) The board shall determine the number of years required to actuarially fund the defined benefit plan's unfunded liabilities as of the June 30, 1998, actuarial valuation, which must be the initial schedule for the defined contribution plan to actuarially fund the plan's share of the unfunded liabilities. The board shall reduce the schedule by 1 year each biennium.

(b) During each subsequent actuarial valuation of the defined benefit plan conducted pursuant to 19-2-405, the board shall determine whether the plan choice rate minus the amount provided in subsection (2)(a) of this section is sufficient to pay the unfunded liability obligations within the schedule determined under subsection (4)(a) of this section. If the amount is insufficient to fund the liability over a period of 10 years longer than the scheduled period or is more than sufficient to fund the liability over a period of 10 years earlier than the scheduled period, the board shall determine to the nearest 0.1% the amount of the increase or decrease in the plan choice rate that is required to actuarially fund the liabilities according to the established schedule.

(5) If the board determines that the plan choice rate should be increased or decreased, the plan choice rate under 19-3-2117(2)(b) must be increased or decreased accordingly. If the plan choice rate is increased, the allocation of employer contributions to member accounts under 19-3-2117(2)(a) must be decreased by that amount. If the plan choice rate is decreased, the allocation of employer contributions to member accounts under 19-3-2117(2)(a) must be increased by that amount.

(6) If the board determines that the contribution rate to the disability plan under 19-3-2117(3) should be increased, the employer contribution to each member's account under 19-3-2117(2)(a) must be decreased by that amount. If the board determines that the contribution rate to the disability plan under 19-3-2117(3) should be decreased, the employer contribution to each member's account under 19-3-2117(2)(a) must be increased by that amount.

(7) By November 1 of the year of a determination pursuant to this section that the allocation of employer contributions under 19-3-2117(2) must be changed, the board shall notify system members, participating employers, employee and employer organizations, the governor, and the legislature of its determination and of the changes required.

(8) Effective January 1 of the year after the regular legislative session that immediately follows a determination under this section, the plan choice rate and the allocation of contributions under 19-3-2117(2) must be adjusted according to the board's determination. *(Terminates on occurrence of contingency—sec. 16, Ch. 423, L. 2001.)*

19-3-2121. *(Effective on occurrence of contingency)* **Determination and adjustment of plan choice rate and contribution allocations.** (1) The board shall periodically review the sufficiency of the plan choice rate and shall adjust the allocation of contributions under 19-3-2117 as specified in this section. The board shall collect and maintain the data necessary to comply with this section.

(2) The plan choice rate set in 19-3-2117(2)(b) must be adjusted as provided in this section, taking into account:

(a) as determined under subsection (3), the change in the normal cost contribution rate in the defined benefit plan that is the result of member selection of the defined contribution plan; and

(b) as determined under subsection (4), the sufficiency of the plan choice rate to actuarially fund the defined contribution plan's share of the defined benefit plan's unfunded liabilities.

(3) The change in the normal cost contribution rate must be an amount equal to the difference between the normal cost contribution rate in the defined benefit plan that would have resulted if all system members remained in the defined benefit plan and the normal cost contribution rate in the defined benefit plan for the actual members of the defined benefit plan, multiplied by the covered payroll of members in the defined benefit plan, divided by the covered payroll of members in the defined contribution plan. The measurements under this subsection must be based on the defined benefit plan in effect on the effective date of the defined contribution plan until the board determines that the defined benefit plan has been amended in a manner that significantly affects plan choices available to system members. After a board determination that the defined benefit plan has been significantly changed, the measurements in this subsection with respect to members entering the system after the significant change must be made on the basis of the defined benefit plan, as amended.

(4) The sufficiency of the plan choice rate to actuarially fund the appropriate share of the defined benefit plan's unfunded liabilities must be determined as follows:

(a) The board shall determine the number of years required to actuarially fund the defined benefit plan's unfunded liabilities as of the June 30, 1998, actuarial valuation, which must be the initial schedule for the defined contribution plan to actuarially fund the plan's share of the unfunded liabilities. The board shall reduce the schedule by 1 year each biennium.

(b) During each subsequent actuarial valuation of the defined benefit plan conducted pursuant to 19-2-405, the board shall determine whether the plan choice rate minus the amount provided in subsection (2)(a) of this section is sufficient to pay the unfunded liability obligations within the schedule determined under subsection (4)(a) of this section. If the amount is insufficient to fund the liability over a period of 10 years longer than the scheduled period or is more than sufficient to fund the liability over a period of 10 years earlier than the scheduled period, the board shall determine to the nearest 0.1% the amount of the increase or decrease in the plan choice rate that is required to actuarially fund the liabilities according to the established schedule.

(5) If the board determines that the plan choice rate should be increased or decreased, the plan choice rate under 19-3-2117(2)(b) must be increased or decreased accordingly. If the plan choice rate is increased, the allocation of employer contributions to member accounts under 19-3-2117(2)(a) must be decreased by that amount. If the plan choice rate is decreased, the allocation of employer contributions to member accounts under 19-3-2117(2)(a) must be increased by that amount.

(6) By November 1 of the year of a determination pursuant to this section that the allocation of employer contributions under 19-3-2117(2) must be changed, the board shall notify system members, participating employers, employee and employer organizations, the governor, and the legislature of its determination and of the changes required.

(7) Effective January 1 of the year after the regular legislative session that immediately follows a determination under this section, the plan choice rate and the allocation of contributions under 19-3-2117(2) must be adjusted according to the board's determination.

History: En. Sec. 54, Ch. 471, L. 1999; amd. Sec. 6, Ch. 423, L. 2001; amd. Sec. 24, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 423 in version effective on occurrence of contingency or July 1, 2002, in (2)(b) substituted "the defined contribution plan member's appropriate share" for "the defined contribution plan's share"; at end of (5) substituted "19-3-2117(2)(a)" for "19-3-2117(2)(b)"; inserted (7) requiring adjustment of employer contribution to member's account based on funding needs of disability plan; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 490 in (1) in first sentence near beginning after "The board shall" substituted "periodically review" for "provide for the periodic review of" and substituted second sentence requiring board to collect and maintain data for former second sentence that read: "The board shall provide that the data necessary to comply with this section is collected and maintained for all system members"; deleted former (2)(b) that read: "(b) as determined under subsection (4), the anticipated reduction in defined contribution plan costs because of forfeitures"; deleted former (4) that read: "(4) The anticipated reduction in defined contribution plan costs as a result of forfeitures under 19-3-2116 must be determined as the amount of forfeitures expected during the next biennium based on actual forfeitures in the preceding biennium, adjusted by taking into account the gains or losses during the preceding biennium resulting from forfeitures of greater or lesser amounts than expected, divided by twice the covered payroll of members of the defined contribution plan"; in (4)(b) in first sentence near middle after "plan choice rate minus" substituted "the amount provided in subsection (2)(a)" for "the sum of the amounts provided in subsections (2)(a) and (2)(b)"; near end of (5) substituted "19-3-2117(2)(a)" for "19-3-2117(2)(b)"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier."

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void."

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

19-3-2122. *(Subsections (4) through (6) effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Investment alternatives — notice of changes — default fund.** (1) The board shall provide for at least eight investment alternatives within the defined contribution plan. In providing for the plan's investment alternatives, only a vendor or vendors offering suitable and well-managed investments, licensed to conduct business in Montana, and regulated by the United States securities and exchange commission may be used, unless exempt from the commission's regulation.

(2) The investment alternatives must include at least three that offer plan members the following:

(a) the ability to materially affect the potential return on amounts in the member's retirement account and the degree of risk to which those amounts are subject;

(b) a range of investment alternatives that:

(i) provides sound and diversified funds;

(ii) offers, under each alternative, a materially different risk and return characteristic than found in the other alternatives;

(iii) allows the member or beneficiary to choose among them to achieve a portfolio with an aggregate risk and return characteristic to achieve a point within the risk and return range normally appropriate for the member or beneficiary based on age, income, and individual retirement goals; and

(iv) tends to minimize through diversification the overall risk of large losses.

(3) The investment alternatives may include the investment alternatives offered to members of the state deferred compensation plan pursuant to chapter 50 of this title.

(4) The board shall from time to time review the suitability and management of investment alternatives and may change the alternatives to be offered. The board shall notify affected members of potential changes before any changes become effective.

(5) Assets within each member's retirement account must be invested as directed by the member.

(6) The board shall provide for a balanced fund to be established as a default investment fund. In the case of a member failing to direct how the member's retirement account is to be invested, the member's entire account must be invested in the default fund.

(7) This section does not prohibit the board from contracting with the board of investments established in 2-15-1808 to provide one or more investment alternatives within the plan.

History: **En. Sec. 55, Ch. 471, L. 1999; amd. Sec. 25, Ch. 490, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 490 in (1) in first sentence near beginning after "The board shall" deleted "contract with a vendor or vendors to" and in second sentence at end after "may be used" inserted "unless exempt from the commission's regulation"; in (3) at beginning deleted "Subject to a competitive bidding process"; in (6) near end after "member's entire account" deleted "balance"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Contingent Effective Date: Section 79(2), Ch. 471, L. 1999, provided that subsections (1) through (3) and (7) of this section are effective on passage and approval. Approved April 27, 1999.

Section 79(4), Ch. 471, L. 1999, provided that subsections (4) through (6) of this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

19-3-2123. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Payout of vested account balances when terminating plan membership.** [Except as provided in 19-3-2142,] any time after termination of service, a member or the member's beneficiary may terminate plan membership by filing a written application with the board and removing the member's vested account balance from the plan through any combination of the following payout options, each of which is subject to applicable regulations of the internal revenue service:

(1) a direct rollover to an eligible retirement plan or to an individual retirement account or annuity pursuant to section 401(a)(31) of the Internal Revenue Code;

(2) a regular rollover to an eligible retirement plan pursuant to section 402(c) of the Internal Revenue Code; or

(3) a lump-sum distribution of the member's vested account balance. *(Bracketed language terminates on occurrence of contingency—sec. 16, Ch. 423, L. 2001.)*

History: **En. Sec. 56, Ch. 471, L. 1999; amd. Sec. 7, Ch. 423, L. 2001; amd. Sec. 26, Ch. 490, L. 2001.**

Compiler's Comments

2001 Amendments — Composite Section: Chapter 423 at beginning inserted exception clause; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 490 in introductory clause near beginning after "after termination of" substituted "service" for "covered employment", near middle after "plan membership by" substituted "filing" for "making", and after "removing the member's" inserted "vested"; in (3) after "the member's" inserted "vested"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier."

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void."

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

19-3-2124. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Distribution options for plan members — rulemaking — minimum distribution requirements — restrictions.** (1) Subject to 19-3-2116, 19-3-2126, [and 19-3-2142,] a member may, after termination of service, leave the member's vested account balance in the plan, and the member is eligible for a distribution as provided in this section.

(2) After termination of service and upon filing a written application with the board, a member may, if provided for by the board, select a distribution option offered pursuant to a contract negotiated by the board with a plan vendor or vendors.

(3) A member who is less than 70 ½ years of age who returns to service may not continue to receive a distribution under this section while actively employed in a covered position.

(4) The board shall adopt rules to administer this section and to provide that distributions comply with the minimum distribution requirements established in the Internal Revenue Code and applicable under 19-2-1007. *(Bracketed language terminates on occurrence of contingency—sec. 16, Ch. 423, L. 2001.)*

History: En. Sec. 57, Ch. 471, L. 1999; amd. Sec. 8, Ch. 423, L. 2001; amd. Sec. 27, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 423 near beginning of (1) inserted reference to 19-3-2142; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 490 in (1) near middle after "after termination of" substituted "service" for "covered employment" and after "leave the member's" inserted "vested"; in (2) near beginning after "termination of" substituted "service and upon filing a written application with" for "covered employment, upon written application to"; in (3) near middle after "who returns to" substituted "service" for "covered employment"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier."

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void."

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-3-2125. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Death benefits.** A plan member's beneficiary must be determined as provided in chapter 2, part 8, of this title. Upon filing a written application with the board after the death of a plan member, the member's beneficiary is entitled to the member's vested account balance subject to this part.

History: En. Sec. 58, Ch. 471, L. 1999; amd. Sec. 28, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 490 in second sentence at end after "to the member's" substituted "vested account balance subject to this part" for "account balance and all rights established in and subject to this part"; and made minor changes in style. Amendment effective July 1, 2001.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

19-3-2126. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Refunds — minimum account balance — adjustment by rule.** (1) Before termination of service, a member may not receive a refund of any portion of the member's vested account.

(2) Except as provided in 19-3-2142, a nonvested member who terminates from service and whose vested account balance is less than $200 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible after the member's termination without a written application from the member.

(3) Except as provided in 19-3-2142, unless a written application is made pursuant to subsection (4)(a), a nonvested member who terminates from service and whose vested account balance is between $200 and $5,000 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible after the member's termination.

(4) (a) Except as provided in 19-3-2142, upon the written application of a terminating member whose vested account balance is $200 or more, the board shall make a direct rollover distribution pursuant to section 401(a)(31) of the Internal Revenue Code of the eligible portion of that balance. To receive the direct rollover distribution, the member is responsible for correctly designating, on forms provided by the board, a retirement plan that allows the rollover and is qualified under applicable federal law.

(b) The direct rollover distribution must be paid directly to the qualified retirement plan.

(c) Except as provided in 19-3-2142, the amount of the member's vested account balance not eligible for a direct rollover distribution under subsection (4)(a) must be paid to the member in a lump sum.

(5) The board may by rule adjust the minimum account balance provided in this section as necessary to maintain reasonable administrative costs and to account for inflation. *(Terminates on occurrence of contingency—sec. 16, Ch. 423, L. 2001.)*

19-3-2126. *(Effective on occurrence of contingency)* **Refunds — minimum account balance — adjustment by rule.** (1) Before termination of service, a member may not receive a refund of any portion of the member's vested account.

(2) A nonvested member who terminates from service and whose vested account balance is less than $200 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible after the member's termination without a written application from the member.

(3) Unless a written application is made pursuant to subsection (4)(a), a nonvested member who terminates from service and whose vested account balance is between $200 and $5,000 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible after the member's termination.

(4) (a) Upon the written application of a terminating member whose vested account balance is $200 or more, the board shall make a direct rollover distribution pursuant to section 401(a)(31) of the Internal Revenue Code of the eligible portion of that balance. To receive the direct rollover distribution, the member is responsible for correctly designating, on forms

provided by the board, a retirement plan that allows the rollover and is qualified under applicable federal law.

(b) The direct rollover distribution must be paid directly to the qualified retirement plan.

(c) The amount of the member's vested account balance not eligible for a direct rollover distribution must be paid to the member in a lump sum.

(5) The board may by rule adjust the minimum account balance provided in this section as necessary to maintain reasonable administrative costs and to account for inflation.

History: En. Sec. 59, Ch. 471, L. 1999; amd. Secs. 9, 14(2)(b), Ch. 423, L. 2001; amd. Sec. 29, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section — Coordination: Pursuant to sec. 14(2)(b), Ch. 423, L. 2001, a coordination instruction, the amendments to this section made by sec. 9, Ch. 423, L. 2001, were replaced as follows: in version effective on occurrence of contingency or July 1, 2002, deleted former (1)(a) and (1)(b) that read: "(a) If a member's account balance is less than $5,000 at the time that the member terminates covered employment, the member shall terminate plan membership by removing the member's account balance from the plan in a manner provided pursuant to 19-3-2123.

(b) If the member fails to remove the member's account balance, the board may close the account by paying to the member a lump-sum distribution of the member's entire account balance"; inserted (1) prohibiting refund of vested account before termination of service; inserted (2) requiring payment on termination of nonvested member's account balance of less than $200; inserted (3) requiring payment on termination of nonvested member's account balance of $200 to $5,000 in lump sum if a written application is not made; inserted (4) requiring direct rollover distribution according to federal law of terminating member's account of $200 or more and payment in lump sum of balance not eligible for rollover; and made minor changes in style. Amendment effective on contingency or July 1, 2002, whichever is earlier.

Chapter 490 in (1) substituted text prohibiting refund before termination of service for former (1)(a) and (1)(b) that read: "(a) If a member's account balance is less than $5,000 at the time that the member terminates covered employment, the member shall terminate plan membership by removing the member's account balance from the plan in a manner provided pursuant to 19-3-2123.

(b) If the member fails to remove the member's account balance, the board may close the account by paying to the member a lump-sum distribution of the member's entire account balance"; inserted (2) through (4) regarding termination of nonvested and vested members; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier."

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void."

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

19-3-2127 through 19-3-2130 reserved.

19-3-2131. *(Temporary)* **Implementation schedule — plan effective date.** (1) In exercising its authority pursuant to this part to implement the defined contribution plan, the board shall:

(a) by September 1, 1999, retain a qualified consultant to assist the board in developing appropriate requests for proposals for contracted services;

(b) by January 1, 2000, issue a request for proposal for all required contracted services;

(c) by August 1, 2000, award the contracts for all required contracted services; and

(d) by September 1, 2000, begin the development and modification of data systems and reporting processes required to administer the plan.

(2) The defined contribution plan must become operational by no later than July 1, 2002. *(Terminates July 1, 2002—sec. 81(2), Ch. 471, L. 1999.)*

History: En. Sec. 60, Ch. 471, L. 1999.

19-3-2132. Terminated. Sec. 81(1), Ch. 471, L. 1999.

History: En. Sec. 61, Ch. 471, L. 1999.

19-3-2133. Creation of employee investment advisory council. The board shall, by August 1, 1999, create an employee investment advisory council. The advisory council shall meet at least quarterly to:

(1) advise the board concerning the establishment and operation of the defined contribution plan, including the selection of the initial investment alternatives to be provided pursuant to 19-3-2122;

(2) advise the board about negotiating, contracting, or modifying services for the state deferred compensation plan provided for in chapter 50; and

(3) review existing deferred compensation plans and to advise the board on the administration of the program.

History: En. Sec. 62, Ch. 471, L. 1999; amd. Sec. 30, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 490 in first sentence after "August 1, 1999" substituted "create" for "appoint". Amendment effective July 1, 2001.

19-3-2134. Terminated. Sec. 81(1), Ch. 471, L. 1999.

History: En. Sec. 63, Ch. 471, L. 1999.

19-3-2135 through 19-3-2140 reserved.

19-3-2141. *(Temporary—subsections (1) through (5) effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Long-term disability plan — benefit amount — eligibility — administration and rulemaking.** (1) (a) Except as provided in subsection (1)(b), a disabled member eligible under the provisions of this section is entitled to a disability benefit equal to one fifty-sixth of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service, including any service credit purchased under 19-3-513.

(b) An eligible member with at least 25 years of service credit is entitled to a disability benefit equal to one-fiftieth of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513.

(2) Payment of the disability benefit provided in this section is subject to the following:

(a) the member must be vested in the plan as provided in 19-3-2116;

(b) the benefit may be paid only until the member reaches 60 years of age; and

(c) the member must satisfy the other applicable requirements of this section and the board's rules adopted to implement this section.

(3) Application for a disability benefit must be made in accordance with 19-3-1005.

(4) The board shall make determinations on disability claims and conduct medical reviews in a manner consistent with the provisions of 19-2-406 and 19-3-1015. A member may seek review of a board determination as provided in rules adopted by the board.

(5) If a member receiving a disability benefit under this section dies, the disability benefit payments cease and the member's beneficiary is entitled to death benefits only as provided for in 19-3-2125.

(6) The board shall establish a long-term disability plan trust fund from which disability benefit costs pursuant to this section must be paid. The trust fund must be entirely separate and distinct from the defined benefit plan trust fund.

(7) The board shall perform the duties, exercise the powers, and adopt reasonable rules to implement the provisions of this section. *(Terminates on occurrence of contingency—sec. 16, Ch. 423, L. 2001.)*

History: En. Sec. 1, Ch. 423, L. 2001; amd. Sec. 14(1), Ch. 423, L. 2001.

Compiler's Comments

2001 Amendment — Coordination: Pursuant to sec. 14(1), Ch. 423, L. 2001, a coordination instruction, this section was amended as follows: in (1)(a) inserted exception clause; and inserted (1)(b) concerning eligible member with at least 25 years of service. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Effective Date: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier."

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void."

19-3-2142. *(Temporary—effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Disability benefit recipients to remain members — access to account prohibited.** A plan member who is receiving a disability benefit pursuant to 19-3-2141 remains a member of the retirement plan irrespective of employment status and may not receive a distribution from the member's retirement account. *(Terminates on occurrence of contingency—sec. 16, Ch. 423, L. 2001.)*

History: En. Sec. 2, Ch. 423, L. 2001.

Compiler's Comments

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void."

Effective Date: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier."

19-3-2143. *(Temporary)* **Implementation.** (1) To implement the provisions of 19-3-2141, the board shall establish a self-insured long-term disability plan through which the disability benefits must be paid.

(2) If the disability plan cannot be implemented as described in subsection (1), the board shall implement the provisions of 19-3-2141 by contracting for long-term disability insurance that provides for the benefits described in 19-3-2141. *(Terminates on occurrence of contingency—sec. 16, Ch. 423, L. 2001.)*

History: En. Sec. 10, Ch. 423, L. 2001.

Compiler's Comments

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void."

Effective Date: This section is effective April 30, 2001. Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier."

CHAPTER 4

TEACHERS' RETIREMENT
(Renumbered and Repealed)

Chapter Compiler's Comments

Sections Renumbered and Repealed:

19-4-101. Renumbered 19-20-101 by Code Commissioner, 1993.
19-4-102. Renumbered 19-20-102 by Code Commissioner, 1993.
19-4-103. Renumbered 19-20-103 by Code Commissioner, 1993.
19-4-104. Renumbered 19-20-104 by Code Commissioner, 1993.
19-4-105. Renumbered 19-20-105 by Code Commissioner, 1993.
19-4-201. Renumbered 19-20-201 by Code Commissioner, 1993.
19-4-202. Renumbered 19-20-202 by Code Commissioner, 1993.
19-4-203. Renumbered 19-20-203 by Code Commissioner, 1993.
19-4-204. Renumbered 19-20-204 by Code Commissioner, 1993.
19-4-205. Renumbered 19-20-205 by Code Commissioner, 1993.
19-4-206. Renumbered 19-20-206 by Code Commissioner, 1993.
19-4-207. Renumbered 19-20-207 by Code Commissioner, 1993.
19-4-208. Renumbered 19-20-208 by Code Commissioner, 1993.
19-4-301. Renumbered 19-20-301 by Code Commissioner, 1993.
19-4-302. Renumbered 19-20-302 by Code Commissioner, 1993.
19-4-303. Renumbered 19-20-303 by Code Commissioner, 1993.

19-4-304. Renumbered 19-20-304 by Code Commissioner, 1993.

19-4-305. Repealed. Sec. 2, Ch. 210, L. 1983.

19-4-401. Renumbered 19-20-401 by Code Commissioner, 1993.

19-4-402. Renumbered 19-20-402 by Code Commissioner, 1993.

19-4-403. Renumbered 19-20-403 by Code Commissioner, 1993.

19-4-404. Renumbered 19-20-404 by Code Commissioner, 1993.

19-4-405. Renumbered 19-20-405 by Code Commissioner, 1993.

19-4-406. Renumbered 19-20-406 by Code Commissioner, 1993.

19-4-407. Renumbered 19-20-407 by Code Commissioner, 1993.

19-4-408. Renumbered 19-20-408 by Code Commissioner, 1993.

19-4-409. Renumbered 19-20-409 by Code Commissioner, 1993.

19-4-410. Renumbered 19-20-410 by Code Commissioner, 1993.

19-4-411. Renumbered 19-20-411 by Code Commissioner, 1993.

19-4-412. Renumbered 19-20-412 by Code Commissioner, 1993.

19-4-413. Renumbered 19-20-413 by Code Commissioner, 1993.

19-4-501. Renumbered 19-20-501 by Code Commissioner, 1993.

19-4-502. Renumbered 19-20-502 by Code Commissioner, 1993.

19-4-503. Renumbered 19-20-503 by Code Commissioner, 1993.

19-4-504. Renumbered 19-20-504 by Code Commissioner, 1993.

19-4-601. Renumbered 19-20-601 by Code Commissioner, 1993.

19-4-602. Renumbered 19-20-602 by Code Commissioner, 1993.

19-4-603. Renumbered 19-20-603 by Code Commissioner, 1993.

19-4-604. Repealed. Sec. 2, Ch. 251, L. 1981.

19-4-605. Renumbered 19-20-605 by Code Commissioner, 1993.

19-4-606. Renumbered 19-20-606 by Code Commissioner, 1993.

19-4-701. Renumbered 19-20-701 by Code Commissioner, 1993.

19-4-702. Renumbered 19-20-702 by Code Commissioner, 1993.

19-4-703. Renumbered 19-20-703 by Code Commissioner, 1993.

19-4-704. Renumbered 19-20-704 by Code Commissioner, 1993.

19-4-705. Renumbered 19-20-705 by Code Commissioner, 1993.

19-4-706. Renumbered 19-20-706 by Code Commissioner, 1993.

19-4-707. Renumbered 19-20-707 by Code Commissioner, 1993.

19-4-708. Renumbered 19-20-708 by Code Commissioner, 1993.

19-4-709. Renumbered 19-20-709 by Code Commissioner, 1993.

19-4-710. Renumbered 19-20-710 by Code Commissioner, 1993.

19-4-711. Renumbered 19-20-711 by Code Commissioner, 1993.

19-4-712. Renumbered 19-20-712 by Code Commissioner, 1993.

19-4-713. Renumbered 19-20-713 by Code Commissioner, 1993.

19-4-801. Renumbered 19-20-801 by Code Commissioner, 1993.

19-4-802. Renumbered 19-20-802 by Code Commissioner, 1993.

19-4-803. Repealed. Sec. 2, Ch. 210, L. 1983.

19-4-804. Renumbered 19-20-804 by Code Commissioner, 1993.

19-4-901. Renumbered 19-20-901 by Code Commissioner, 1993.

19-4-902. Renumbered 19-20-902 by Code Commissioner, 1993.

19-4-903. Renumbered 19-20-903 by Code Commissioner, 1993.

19-4-904. Renumbered 19-20-904 by Code Commissioner, 1993.

19-4-905. Renumbered 19-20-905 by Code Commissioner, 1993.

19-4-1001. Renumbered 19-20-1001 by Code Commissioner, 1993.

19-4-1002. Renumbered 19-20-1002 by Code Commissioner, 1993.

19-4-1101. Renumbered 19-20-1101 by Code Commissioner, 1993.

Histories of Repealed Sections:

19-4-305. En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(c).

19-4-604. En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(3).

19-4-803. En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(b); amd. Sec. 5, Ch. 114, L. 1979.

CHAPTER 5

JUDGES' RETIREMENT

Part 1 — General Provisions

19-5-101. Definitions.
19-5-102. Judges' retirement system established.
19-5-103. Call of retired judges and justices and inactive vested members for duty.
19-5-104. Renumbered 19-2-1009.
19-5-105. Short title.

Part 2 — Administration
(Repealed. Sec. 236, Ch. 265, L. 1993)

Part 3 — Eligibility, Membership, and Vesting

19-5-301. Membership — inactive vested members — inactive nonvested members.
19-5-302. Repealed.
19-5-303. Repealed.
19-5-304. Repealed.

Part 4 — Contributions and Refunds

19-5-401. Payments into pension trust fund.
19-5-402. Member's contribution.
19-5-403. Refunds in case of resignation or discharge.
19-5-404. Contributions by state.
19-5-405 through 19-5-408. Repealed.
19-5-409. Application to purchase additional service.

Part 5 — Service Retirement Benefits

19-5-501. Eligibility for service retirement.
19-5-502. Service retirement benefit.
19-5-503. Involuntary retirement benefit.
19-5-504. Repealed.

Part 6 — Disability Retirement Benefits

19-5-601. Disability retirement benefit.
19-5-602. Repealed.
19-5-603. Renumbered 19-5-801 by Code Commissioner, 1993.
19-5-604. Renumbered 19-5-802 by Code Commissioner, 1993.
19-5-605 through 19-5-610 reserved.
19-5-611. Renumbered 19-2-406.
19-5-612. Medical examination of disability retiree — cancellation of benefit.

Part 7 — Optional Benefit Payments

19-5-701. Optional forms of benefits — designation of contingent annuitant.
19-5-702 through 19-5-706. Repealed.

Part 8 — Survivorship Benefits and Death Payments

19-5-801. Payments upon employment-related death.
19-5-802. Payments in case of death from other causes.

Part 9 — Postretirement Benefits and Benefit Increases

19-5-901. Guaranteed annual benefit adjustment.
19-5-902. Election — guaranteed annual benefit adjustment.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Courts and judicial officers generally, Title 3, ch. 1.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
The Public Employees' Retirement Act — general provisions, Title 19, ch. 2.
Public employees' retirement system, Title 19, ch. 3.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.

Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement system, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.

Part 1
General Provisions

19-5-101. Definitions. Unless a different meaning is plainly implied by the context, the following definitions apply in this chapter:

(1) "Compensation" means remuneration, as defined in 2-16-403, 3-5-211, and 3-7-222, paid to a member.

(2) "Current salary" means the current compensation for the office retired from.

(3) "Highest average compensation" means the average of the member's highest monthly compensation during any 36 consecutive months of membership service in the retirement system.

(4) "Involuntary retirement" means a retirement not for cause and before retirement age.

(5) "Retired judge" means any judge or justice in receipt of a retirement benefit under this chapter.

History: En. Sec. 1, Ch. 289, L. 1967; amd. Sec. 1, Ch. 218, L. 1969; amd. Sec. 1, Ch. 251, L. 1975; amd. Sec. 1, Ch. 63, L. 1977; amd. Sec. 5, Ch. 132, L. 1977; R.C.M. 1947, 93-1107; amd. Sec. 4, Ch. 282, L. 1983; amd. Sec. 3, Ch. 45, L. 1987; amd. Sec. 6, Ch. 196, L. 1989; amd. Sec. 95, Ch. 265, L. 1993; amd. Sec. 18, Ch. 455, L. 1995; amd. Sec. 13, Ch. 287, L. 1997; amd. Sec. 43, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 substituted highest average compensation for final average salary as defined term; and made minor changes in style. Amendment effective March 21, 2001,

19-5-102. Judges' retirement system established. There is a retirement plan known as the judges' retirement system, which is governed by the provisions of chapter 2 and this chapter.

History: En. 93-1107.1 by Sec. 2, Ch. 63, L. 1977; R.C.M. 1947, 93-1107.1; amd. Sec. 94, Ch. 265, L. 1993; amd. Sec. 40, Ch. 562, L. 1999.

Cross-References

Public Employees' Retirement Board — administration, Title 19, ch. 2, part 4.
Chief Water Judge — membership in system, 19-5-301.

19-5-103. Call of retired judges and justices and inactive vested members for duty. (1) (a) If physically and mentally able, a retired judge or justice who has voluntarily retired after at least 8 years of service is subject to call for duty by the chief justice to aid and assist any district court or any water court under directions that the chief justice may give or to serve as water judge.

(b) When called, a retired judge's or justice's duties include the examination of the facts, cases, and authorities cited and the preparation of opinions for and on behalf of the court to which the judge or justice is called to serve. The opinions, when and if and to the extent approved by the court, may be ordered by the court to constitute the opinion of the court. The court and the retired judge or justice may, subject to any rule that the supreme court may adopt, perform any duties preliminary to the final disposition of cases that are not inconsistent with the constitution of the state.

(2) (a) A retired judge or justice, when called to duty, must be reimbursed for actual expenses, if any, in responding to the call.

(b) In addition, a retired judge or justice is entitled to receive compensation in an amount equal to:

(i) the daily salary then currently applicable to the judicial position in which the duty is rendered for each day of duty rendered, up to a total of 180 days in a calendar year; and

(ii) for each day of duty after 180 days in a calendar year, one-twentieth of the monthly salary then currently applicable to the judicial position in which the duty is rendered minus an amount equal to one-twentieth of the monthly retirement benefit that the retired judge or justice is receiving, if any.

(3) A judge or justice who is an inactive vested member, who has voluntarily terminated service as an active judge after 8 years of service, and who, by reason of age, is not eligible to receive a retirement benefit under this chapter may be called for duty as provided in subsection (1). A judge or justice called to duty under this subsection must be reimbursed as provided in subsection (2)(a) and compensated as provided in subsection (2)(b)(i) regardless of the number of days served in a calendar year.

History: En. Sec. 24, Ch. 289, L. 1967; R.C.M. 1947, 93-1130; amd. Sec. 1, ch. 254, L. 1979; amd. Sec. 5, Ch. 80, L. 1981; amd. Sec. 3, Ch. 256, L. 1983; amd. Sec. 1, Ch. 425, L. 1983; amd. Sec. 96, Ch. 265, L. 1993; amd. Sec. 20, Ch. 370, L. 1997; amd. Sec. 1, Ch. 233, L. 1999; amd. Sec. 1, Ch. 48, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 48 in (1)(a) after "voluntarily retired after" inserted "at least", after "call for duty by the" deleted "supreme court or the", after "aid and assist" deleted "the supreme court", after "under directions that the" substituted "chief justice" for "supreme court", and at end substituted "or to serve as water judge" for "including"; in (1)(b) at beginning of first sentence inserted "When called, a retired judge's or justice's duties include" and at end substituted "on behalf of the court to which the judge or justice is called to serve" for "on behalf of the supreme court, district court, or water court or to serve as water judge"; inserted (3) allowing certain judges or justices to be called for duty and requiring a judge or justice called for duty to be reimbursed and compensated; and made minor changes in style. Amendment effective March 16, 2001.

Cross-References

Supreme Court jurisdiction, Art. VII, sec. 2, Mont. Const.
Judicial Standards Commission, Title 3, ch. 1, part 11.
Salaries and expenses of District Judges, 3-5-211.
Water Judges, Title 3, ch. 7, part 2.

19-5-104. Renumbered 19-2-1009. Sec. 238, Ch. 265, L. 1993.

19-5-105. Short title. This chapter may be cited as the "Judges' Retirement Act".
History: En. Sec. 93, Ch. 265, L. 1993.

Part 2
Administration
(Repealed. Sec. 236, Ch. 265, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

19-5-201. En. Sec. 6, Ch. 289, L. 1967; amd. Sec. 5, Ch. 63, L. 1977; amd. Sec. 20, Ch. 332, L. 1977; R.C.M. 1947, 93-1112(1), (2).

19-5-202. En. Sec. 4, Ch. 289, L. 1967; amd. Sec. 1, Ch. 23, L. 1969; amd. Sec. 3, Ch. 63, L. 1977; R.C.M. 1947, 93-1110; amd. Sec. 1, Ch. 235, L. 1981; amd. Sec. 5, Ch. 282, L. 1983.

Part 3
Eligibility, Membership, and Vesting

Part Cross-References

The Public Employees' Retirement Act — general provisions — termination of membership and refunds, Title 19, ch. 2, part 6.

The Public Employees' Retirement Act — general provisions — service credit and additional contributions, Title 19, ch. 2, part 7.

PERS — membership, Title 19, ch. 3, part 4.
Highway patrol retirement — membership, Title 19, ch. 6, part 3.
Sheriffs' retirement — membership, Title 19, ch. 7, part 3.
Game wardens' and peace officers' retirement — membership, Title 19, ch. 8, part 3.
Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.
Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.
Teachers' retirement — membership, Title 19, ch. 20, part 3.

19-5-301. Membership — inactive vested members — inactive nonvested members. (1) Except for a judge or justice who elected in writing to remain under the public employees' retirement system on or before October 1, 1985, a judge of a district court, a justice of the supreme court, and the chief water judge provided for in 3-7-221 must be members of the Montana judges' retirement system.

(2) A judge pro tempore is not eligible for active membership in the retirement system.

(3) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and

retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(4) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

History: En. Sec. 7, Ch. 289, L. 1967; amd. Sec. 6, Ch. 63, L. 1977; R.C.M. 1947, 93-1113(1), (2); amd. Sec. 1, Ch. 298, L. 1985; amd. Sec. 1, Ch. 364, L. 1991; amd. Sec. 97, Ch. 265, L. 1993.

Cross-References

Legislators — continued participation, 5-2-304.
PERS — refund when member dies after transferring to another system, 19-3-1211.

19-5-302. Repealed. Sec. 236, Ch. 265, L. 1993.

History: (1)En. Sec. 8, Ch. 289, L. 1967; Sec. 93-1114, R.C.M. 1947; (2)En. Sec. 19, Ch. 289, L. 1967; amd. Sec. 21, Ch. 332, L. 1977; Sec. 93-1125, R.C.M. 1947; R.C.M. 1947, 93-1114, 93-1125(part).

19-5-303. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 7, Ch. 289, L. 1967; amd. Sec. 6, Ch. 63, L. 1977; R.C.M. 1947, 93-1113(3).

19-5-304. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 22, Ch. 289, L. 1967; amd. Sec. 9, Ch. 63, L. 1977; R.C.M. 1947, 93-1128.

Part 4
Contributions and Refunds

Part Cross-References

Management and investment of pension trust funds, Title 19, ch. 2, part 5.
PERS — contributions, Title 19, ch. 3, part 3.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-5-401. Payments into pension trust fund. All appropriations made by the state of Montana, all contributions by members, and all interest on and increase of the investments and money in the pension trust fund must be paid to the board, which shall credit the payments to the fund. These funds may be commingled with other pension trust funds of the board, but separate accounts must be maintained for the judges' retirement system.

History: En. Sec. 5, Ch. 289, L. 1967; amd. Sec. 4, Ch. 63, L. 1977; R.C.M. 1947, 93-1111; amd. Sec. 98, Ch. 265, L. 1993; amd. Sec. 41, Ch. 562, L. 1999.

Cross-References

The Public Employees' Retirement Act — general provisions — management and investment of pension trust funds, Title 19, ch. 2, part 5.
Highway patrol retirement — payments into pension trust fund, 19-6-401.
Sheriffs' retirement — sources of money in fund, 19-7-402.
Game wardens' and peace officers' retirement — contributions to pension trust fund, 19-8-501.
Firefighters' retirement — contributions to fund, 19-18-501.

19-5-402. Member's contribution. (1) Each member shall contribute into the fund a sum equal to 7% of the member's monthly compensation beginning on the first day of the member's term.

(2) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code, as amended and applicable on July 1, 1991, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1991.

(3) The member's contribution picked up by the employer is the member's contribution for all purposes of the retirement system, except for the determination of a tax upon a distribution from the retirement system. The contributions must become part of the member's accumulated contributions but must be accounted for separately from the previously accumulated contributions.

(4) The member's contributions picked up by the employer are payable from the same source used to pay compensation to the member and must be included in the member's monthly compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. Sec. 9, Ch. 289, L. 1967; R.C.M. 1947, 93-1115; amd. Sec. 2, Ch. 524, L. 1983; amd. Sec. 1, Ch. 74, L. 1991; amd. Sec. 99, Ch. 265, L. 1993.

Cross-References

Refund of contributions on termination of service, 19-2-602.
Reinstatement after withdrawal of contributions, 19-2-603.
Purchase of service credits allowed, 19-2-704.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Employer to furnish itemized statement of deductions, 39-3-101.

19-5-403. Refunds in case of resignation or discharge. When a member willingly resigns or is discharged for cause before becoming entitled to a retirement benefit, the accumulated contributions standing to the member's credit must be paid to the member upon the board's receipt of the member's written application for a refund.

History: En. Sec. 16, Ch. 289, L. 1967; R.C.M. 1947, 93-1122; amd. Sec. 1, Ch. 50, L. 1991; amd. Sec. 100, Ch. 265, L. 1993.

Cross-References

Refund of contributions on termination of service, 19-2-602.
Teachers' retirement — withdrawal of accumulated contributions, 19-20-603.

19-5-404. Contributions by state. (1) Except as provided in subsection (2), the state of Montana shall contribute monthly to the pension trust fund a sum equal to 25.81% of the compensation of each member.

(2) The state of Montana shall contribute monthly from the renewable resource grant and loan program account in the state special revenue fund to the judges' pension trust fund an amount equal to 25.81% of the compensation paid to the chief water court judge. The judiciary shall include in its budget and shall request for legislative appropriation an amount necessary to defray the state's portion of the costs of this section.

History: En. Sec. 10, Ch. 289, L. 1967; amd. Sec. 7, Ch. 63, L. 1977; amd. Sec. 2, Ch. 548, L. 1977; R.C.M. 1947, 93-1116(part); amd. Sec. 3, Ch. 524, L. 1983; amd. Sec. 2, Ch. 318, L. 1987; amd. Sec. 2, Ch. 642, L. 1987; amd. Secs. 1, 2, Ch. 664, L. 1989; amd. Sec. 2, Ch. 344, L. 1991; (2)En. Sec. 2, Ch. 364, L. 1991; amd. Sec. 101, Ch. 265, L. 1993; amd. Sec. 14, Ch. 287, L. 1997; amd. Sec. 20, Ch. 532, L. 1997.

Cross-References

Supreme Court fees — disposition, 3-2-404.
Payment of contributions by employers — accompanying reports — penalty, 19-2-506.

19-5-405 through 19-5-408. Repealed. Sec. 236, Ch. 265, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

19-5-405. Ap. p. Sec. 10, Ch. 289, L. 1967; amd. Sec. 7, Ch. 63, L. 1977; amd. Sec. 548, L. 1977; Sec. 93-1116, R.C.M. 1947; Ap. p. Sec. 6, Ch. 289, L. 1967; amd. Sec. 5, Ch. 63, L. 1977; amd. Sec. 20, Ch. 332, L. 1977; Sec. 93-1112, R.C.M. 1947; R.C.M. 1947, 93-1112(3), 93-1116(part).

19-5-406. En. Sec. 27, Ch. 289, L. 1967; R.C.M. 1947, 93-1132.

19-5-407. En. Sec. 6, Ch. 289, L. 1967; amd. Sec. 5, Ch. 63, L. 1977; amd. Sec. 20, Ch. 332, L. 1977; R.C.M. 1947, 93-1112(4).

19-5-408. En. Sec. 3, Ch. 138, L. 1991.

19-5-409. Application to purchase additional service. (1) At any time before retirement, a member may file a written application with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has in the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board.

(3) A member may not purchase more than 5 years of service under 19-2-707 and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement.

History: En. Sec. 1, Ch. 180, L. 1995; amd. Sec. 26, Ch. 58, L. 1999; amd. Sec. 44, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 near beginning of (1) after "member may" substituted "file a written application" for "make a written election" and near end after "member has" substituted "in" for "qualified under"; and in (3) at beginning substituted "A member may not purchase" for "A member may elect to qualify no". Amendment effective March 21, 2001.

Part 5
Service Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — service retirement, Title 19, ch. 3, part 9.
Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.
Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.
Game wardens' and peace officers' retirement — service retirement, Title 19, ch. 8, part 6.
Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.
Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.
Teachers' retirement — superannuation retirement, Title 19, ch. 20, part 8.

19-5-501. Eligibility for service retirement. (1) A member who has at least 5 years of membership service and has reached the age of 60 has attained normal retirement age and may retire and receive the retirement benefits provided in 19-5-502.

(2) Retirement benefits may not be approved by the board while the member is drawing full compensation as a judge or justice. However, benefits may not be withheld for receiving compensation as a judge pro tempore.

History: (1)En. Sec. 11, Ch. 289, L. 1967; Sec. 93-1117, R.C.M. 1947; (2)En. Sec. 19, Ch. 289, L. 1967; amd. Sec. 21, Ch. 332, L. 1977; Sec. 93-1125, R.C.M. 1947; R.C.M. 1947, 93-1117, 93-1125(part); amd. Sec. 10, Ch. 663, L. 1987; amd. Sec. 102, Ch. 265, L. 1993; amd. Sec. 45, Ch. 99, L. 2001; amd. Sec. 1, Ch. 176, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 99 in (1) after "age of 65" inserted "has attained normal retirement age and" and after "receive the" deleted "proportional"; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 176 in (1) near middle reduced age from 65 to 60; and made minor changes in style. Amendment effective March 30, 2001.

19-5-502. Service retirement benefit. Upon retirement from service, the service retirement benefit must be as follows:

(1) for members not covered under 19-5-901, 3 $\frac{1}{3}$% a year of the member's current salary for the first 15 years of credited service and 1.785% a year for each year of credited service after 15 years; or

(2) for members covered under 19-5-901, the benefit provided under subsection (1) except that the benefit must be calculated using highest average compensation.

History: En. Sec. 12, Ch. 289, L. 1967; R.C.M. 1947, 93-1118; amd. Sec. 3, Ch. 664, L. 1989; amd. Sec. 103, Ch. 265, L. 1993; amd. Sec. 15, Ch. 287, L. 1997; amd. Sec. 46, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at end of (2) substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

19-5-503. Involuntary retirement benefit. (1) If a member is involuntarily discontinued from service after having completed 5 years of membership service but before reaching normal retirement age, the member must, upon filing with the board an application in the manner prescribed by the board, be paid an involuntary retirement benefit of equivalent actuarial value to the service retirement benefit payable under 19-5-502 then standing to the member's credit.

(2) If a member elected or appointed to office after July 1, 1983, is discontinued from service after having earned at least 12 years of service credit but before reaching normal

retirement age, the member may apply for and receive a retirement benefit that is the actuarial equivalent of benefits pursuant to subsection (1).

History: En. Sec. 14, Ch. 289, L. 1967; amd. Sec. 1, Ch. 89, L. 1975; amd. Sec. 8, Ch. 63, L. 1977; R.C.M. 1947, 93-1120; amd. Sec. 4, Ch. 524, L. 1983; amd. Sec. 104, Ch. 265, L. 1993; amd. Sec. 42, Ch. 562, L. 1999; amd. Sec. 47, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) near middle before "retirement age" inserted "normal" and after "filing" inserted "with the board"; in (2) near middle after "reaching" substituted "normal retirement age" for "service retirement age"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

PERS — early retirement benefit, 19-3-906.
Highway patrol retirement — early retirement benefit, 19-6-503.
Game wardens' and peace officers' retirement — early retirement benefit, 19-8-604.
Firefighters' retirement — partial service pension, 19-18-603.
Teachers' retirement — early retirement, 19-20-802.

19-5-504. Repealed. Sec. 1, Ch. 12, L. 1987.

History: En. Sec. 15, Ch. 289, L. 1967; R.C.M. 1947, 93-1121.

Part 6
Disability Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2. part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — disability retirement, Title 19, ch. 3, part 10.
Highway patrol retirement — disability retirement benefits, Title 19, ch. 6, part 6.
Sheriffs' retirement — disability retirement benefits, Title 19, ch. 7, part 6.
Game wardens' and peace officers' retirement — disability retirement benefits, Title 19, ch. 8, part 7.
Police retirement — statewide plan — disability retirement benefits, Title 19, ch. 9, part 9.
Firefighters' unified retirement — disability retirement benefits, Title 19, ch. 13, part 8.
Teachers' retirement — disability retirement, Title 19, ch. 20, part 9.

19-5-601. Disability retirement benefit. In the case of the disability of a member, a disability retirement benefit must be granted the member in an amount actuarially equivalent to the service retirement benefit standing to the member's credit at the time of the member's disability retirement. If the disability is a direct result of any service or duty for the Montana judiciary, the member's disability retirement benefit must be:

(1) the greater of one-half of the member's current salary or the contingent annuitant's benefit, if applicable, for a person not covered under 19-5-901; or

(2) the greater of one-half of the member's highest average compensation or the contingent annuitant's benefit, if applicable, for a person covered under 19-5-901.

History: En. Sec. 13, Ch. 289, L. 1967; R.C.M. 1947, 93-1119; amd. Sec. 105, Ch. 265, L. 1993; amd. Sec. 16, Ch. 287, L. 1997; amd. Sec. 41(3), Ch. 370, L. 1997; amd. Sec. 48, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) after "member's" deleted "final"; in (2) after "member's" substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Supreme Court power to retire for disability on recommendation of Judicial Standards Commission, Art. VII, sec. 11, Mont. Const.
Action by Supreme Court on recommendation of Judicial Standards Commission, 3-1-1107.
Disability benefits — exclusion from income tax, 15-30-111.
Disability defined, 19-2-303.
Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.

19-5-602. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 21, Ch. 289, L. 1967; R.C.M. 1947, 93-1127.

19-5-603. Renumbered 19-5-801 by Code Commissioner, 1993.

19-5-604. Renumbered 19-5-802 by Code Commissioner, 1993.

19-5-605 through 19-5-610 reserved.

19-5-611. Renumbered 19-2-406. Sec. 238, Ch. 265, L. 1993.

19-5-612. Medical examination of disability retiree — cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.

(2) The cancellation of a disability retirement benefit because a recipient is no longer incapacitated may not prejudice any right of the recipient to a retirement benefit other than a disability retirement benefit.

History: **En. Sec. 2, Ch. 597, L. 1981; amd. Sec. 106, Ch. 265, L. 1993; amd. Sec. 14, Ch. 412, L. 1995.**

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1015.

Highway patrol retirement — medical examination of disability retiree — cancellation of benefit, 19-6-612

Sheriffs' retirement — medical examination of disability retiree — cancellation of benefit, 19-7-612.

Game wardens' and peace officers' retirement — medical examination of disability retiree — cancellation of benefit, 19-8-712.

Police retirement — statewide plan — reinstatement upon termination of benefit, 19-9-905.

Firefighters' unified retirement — medical examination of disability retiree — cancellation of benefit, 19-13-804.

Teachers' retirement — medical examination of disability retiree, 19-20-903.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-20-905.

Part 7

Optional Benefit Payments

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.

Exemption from taxes and legal process — exceptions, 19-2-1004.

19-5-701. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit to a contingent annuitant as follows:

(a) option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board.

(2) The member or designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary was not granted the right to receive the optional retirement benefit as part of the dissolution settlement or a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the dissolution settlement or family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the value of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change.

History: En. Sec. 25, Ch. 289, L. 1967; amd. Sec. 10, Ch. 63, L. 1977; R.C.M. 1947, 93-1131; amd. Sec. 1, Ch. 126, L. 1987; amd. Sec. 109, Ch. 265, L. 1993; amd. Sec. 2, Ch. 217, L. 1999; amd. Sec. 43, Ch. 562, L. 1999; amd. Sec. 49, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) near end of second sentence after "benefit" deleted "payable" and after "annuitant" deleted "that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits"; in (1)(c) after "amounts" inserted "payable to a contingent annuitant"; in (2) at beginning of first sentence substituted "The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board" for "Election of an optional retirement benefit must be by written application filed" and inserted second sentence requiring identification of a contingent annuitant on the application; in (4) after "member's" substituted "written application electing or changing an election" for "election or changed election" and at end after "void" deleted "and the death is considered as that of a member before retirement"; in (5)(a) near beginning after "that is" substituted "initially effective on or after October 1, 1999" for "effective after October 1, 1999"; in (7)(a) at beginning substituted "Upon filing a written application with the board" for "Upon written application to the board"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

PERS — optional forms of benefits, 19-3-1501.
Sheriffs' retirement — optional forms of benefits, 19-7-1001.
Game wardens' and peace officers' retirement — optional forms of benefits, 19-8-801.
Teachers' retirement — optional allowances, 19-20-702.

19-5-702 through 19-5-706. Repealed. Sec. 236, Ch. 265, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

19-5-702. En. Sec. 19, Ch. 289, L. 1967; amd. Sec. 21, Ch. 332, L. 1977; R.C.M. 1947, 93-1125(part).
19-5-703. En. Sec. 23, Ch. 289, L. 1967; R.C.M. 1947, 93-1129(part).
19-5-704. En. Sec. 20, Ch. 289, L. 1967; amd. Sec. 10, Ch. 214, L. 1977; R.C.M. 1947, 93-1126; amd. Sec. 2, Ch. 74, L. 1991; amd. Sec. 8, Ch. 823, L. 1991.
19-5-705. En. 93-1126.1 by Sec. 11, Ch. 214, L. 1977; R.C.M. 1947, 93-1126.1.
19-5-706. En. Sec. 1, Ch. 14, L. 1987.

Part 8

Survivorship Benefits and Death Payments

Part Cross-References

Beneficiaries, Title 19, ch. 2, part 8.
Designation of beneficiary, 19-2-801.
Limitations on payment of benefits to person causing member's death or disability, 19-2-804.
Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.

19-5-801. Payments upon employment-related death. (1) If the board finds that a member died as a direct and proximate result of injury received in the course of the member's service or duty, a survivorship benefit must be paid to the member's designated beneficiary.

(2) The survivorship benefit is the greater of the following:

(a) the equivalent of the contingent annuitant's benefit, if applicable; or

(b) the member's service retirement benefit standing to the member's credit on the date of death.

History: En. Sec. 17, Ch. 289, L. 1967; R.C.M. 1947, 93-1123; amd. Sec. 107, Ch. 265, L. 1993; Sec. 19-5-603, MCA 1991; redes. 19-5-801 by Code Commissioner, 1993; amd. Sec. 22, Ch. 370, L. 1997; amd. Sec. 50, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (2) at end of introductory clause inserted "following"; in (2)(a) substituted "the equivalent of the contingent annuitant's benefit, if applicable" for "actuarial equivalent of"; in (2)(b) at end after "death" deleted "or of the contingent annuitant's benefit, if applicable"; and made minor changes in style. Amendment effective March 21, 2001.

19-5-802. Payments in case of death from other causes. (1) If a retired member not covered under 19-5-901 dies without designating a contingent annuitant under 19-5-701(2), the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account. At the designated beneficiary's request, the lump sum may be paid as an actuarially equivalent annuity that will not be subject to increases for any purpose.

(2) If a retired member covered under 19-5-901 dies without designating a contingent annuitant under 19-5-701(2), the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(3) If a member dies before reaching normal retirement age, the member's designated beneficiary is entitled to a monthly survivorship benefit that is the actuarial equivalent of the involuntary retirement benefit provided in 19-5-503.

History: En. Sec. 18, Ch. 289, L. 1967; R.C.M. 1947, 93-1124; amd. Sec. 108, Ch. 265, L. 1993; Sec. 19-5-604, MCA 1991; redes. 19-5-802 by Code Commissioner, 1993; amd. Sec. 17, Ch. 287, L. 1997; amd. Sec. 44, Ch. 562, L. 1999; amd. Sec. 51, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) and (2) substituted "19-5-701(2)" for "19-5-701"; and in (3) near beginning after "reaching" inserted "normal" and near end after "retirement" substituted "benefit" for "options". Amendment effective March 21, 2001.

Part 9
Postretirement Benefits and Benefit Increases

19-5-901. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 3% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made;

and

(b) the member or benefit recipient either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998.

(4) The board shall adopt rules to administer the provisions of this section.

History: En. Sec. 2, Ch. 287, L. 1997; amd. Sec. 45, Ch. 562, L. 1999; amd. Sec. 2, Ch. 62, L. 2001; amd. Sec. 5, Ch. 149, L. 2001; amd. Sec. 2, Ch. 309, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3)(a) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-5-902. Election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-5-901 remains valid. The decision of a member who elected not to participate under 19-5-901 may be reversed under this section.

History: En. Sec. 6, Ch. 149, L. 2001.

Compiler's Comments

Effective Date: Section 22, Ch. 149, L. 2001, provided that this section is effective on passage and approval. Approved March 29, 2001.

CHAPTER 6

HIGHWAY PATROL OFFICERS' RETIREMENT

Part 1 — General Provisions

19-6-101. Definitions.
19-6-102. Highway patrol officers' retirement system established.
19-6-103. Repealed.

19-6-104. Repealed.
19-6-105. Repealed.
19-6-106. Short title.

Part 2 — Administration (Repealed and Terminated)

19-6-201. Repealed.
19-6-202. Repealed.
19-6-203. Repealed.
19-6-204. Terminated.

Part 3 — Eligibility, Membership, and Vesting

19-6-301. Membership — inactive vested members — inactive nonvested members.
19-6-302. Repealed.
19-6-303. Repealed.
19-6-304. Renumbered 19-6-801 by Code Commissioner, 1993.
19-6-305. Renumbered 19-6-802 by Code Commissioner, 1993.
19-6-306. Renumbered 19-6-803 by Code Commissioner, 1993.

Part 4 — Contributions and Refunds

19-6-401. Payments into pension trust fund.
19-6-402. Member's contribution.
19-6-403. Refund of member's contribution.
19-6-404. State's contribution.
19-6-405 through 19-6-409. Repealed.

Part 5 — Service Retirement Benefits

19-6-501. Eligibility for service retirement benefit.
19-6-502. Service retirement benefit.
19-6-503. Early retirement benefit for member discontinued from service other than for cause.
19-6-504. Repealed.
19-6-505. Payment of retirement benefits.
19-6-506. Repealed.

Part 6 — Disability Retirement Benefits

19-6-601. Disability retirement benefit.
19-6-602. Repealed.
19-6-603. Renumbered 19-6-901 by Code Commissioner, 1993.
19-6-604. Renumbered 19-6-902 by Code Commissioner, 1993.
19-6-605 through 19-6-610 reserved.
19-6-611. Repealed.
19-6-612. Medical examination of disability retiree — cancellation of benefit.

Part 7 — Postretirement Benefits and Benefit Increases

19-6-701. Repealed.
19-6-702 through 19-6-706. Repealed.
19-6-707. Minimum monthly benefit.
19-6-708. Repealed.
19-6-709. Supplemental benefits for certain retirees.
19-6-710. Guaranteed annual benefit adjustment.
19-6-711. Election — guaranteed annual benefit adjustment.

Part 8 — Service Credit

19-6-801. Application to purchase military service.
19-6-802. Purchase of other Montana public service.
19-6-803. Application to purchase law enforcement service performed in another state.
19-6-804. Application to purchase additional service.
19-6-805. Service purchase limitation.
19-6-806 through 19-6-809 reserved.
19-6-810. Absence because of illness or injury.

Part 9 — Survivorship Benefits and Death Payments

19-6-901. Survivorship benefits — employment-related death.
19-6-902. Survivorship benefits — death from other causes.
19-6-903. Death payments in absence of survivors.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
The Public Employees' Retirement Act — general provisions, Title 19, ch. 2.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement system, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.
Highway patrol, Title 44, ch. 1.

Part 1
General Provisions

19-6-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code have been made and exclusive of maintenance, allowances, and expenses.

(2) "Dependent child" means an unmarried child of a deceased retired member, who is:

(a) under 18 years of age; or

(b) under 24 years of age and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) "Highest average compensation" means the highest average monthly compensation received by a member for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to an employee upon termination of service may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(4) "Surviving spouse" means the spouse married to a retired member at the time of the retired member's death.

(5) "Survivor" means a surviving spouse or dependent child of a member.

History: En. Sec. 1, Ch. 37, L. 1945; amd. Sec. 1, Ch. 243, L. 1955; amd. Sec. 201, Ch. 147, L. 1963; amd. Sec. 5, Ch. 326, L. 1974; amd. Sec. 1, Ch. 361, L. 1974; amd. Sec. 1, Ch. 65, L. 1977; amd. Sec. 1, Ch. 332, L. 1977; R.C.M. 1947, 31-201; amd. Secs. 6, 7, Ch. 114, L. 1979; amd. Sec. 1, Ch. 206, L. 1981; amd. Sec. 6, Ch. 282, L. 1983; amd. Sec. 1, Ch. 86, L. 1985; amd. Sec. 1, Ch. 278, L. 1985; amd. Sec. 4, Ch. 45, L. 1987; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 112, Ch. 265, L. 1993; amd. Sec. 12, Ch. 640, L. 1993; amd. Sec. 27, Ch. 58, L. 1999; amd. Sec. 52, Ch. 99, L. 2001; amd. Sec. 7, Ch. 149, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 99 substituted highest average compensation for final average salary as defined term, near beginning of first sentence of definition after "means the" inserted "highest", and at end of second sentence substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

Chapter 149 in definition of final average salary near beginning of second sentence after "severance pay" inserted "including payment for compensatory leave". Amendment effective March 29, 2001.

19-6-102. Highway patrol officers' retirement system established. There is a retirement plan known as the highway patrol officers' retirement system, which is governed by the provisions of chapter 2 and this chapter.

History: En. Sec. 31-201.1 by Sec. 2, Ch. 65, L. 1977; R.C.M. 1947, 31-201.1; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 111, Ch. 265, L. 1993; amd. Sec. 46, Ch. 562, L. 1999.

Cross-References

Public Employees' Retirement Board — administration, Title 19, ch. 2, part 4.

19-6-103. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 27, Ch. 37, L. 1945; R.C.M. 1947, 31-227.

19-6-104. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 24, Ch. 37, L. 1945; amd. Sec. 12, Ch. 326, L. 1974; R.C.M. 1947, 31-224(1)(a), (2).

19-6-105. Repealed. Sec. 5, Ch. 206, L. 1981.
History: En. Sec. 26, Ch. 37, L. 1945; R.C.M. 1947, 31-226; amd. Sec. 7, Ch. 114, L. 1979.

19-6-106. Short title. This chapter may be cited as "The Highway Patrol Officers' Retirement Act".
History: En. Sec. 110, Ch. 265, L. 1993.

Part 2
Administration
(Repealed and Terminated)

19-6-201. Repealed. Sec. 236, Ch. 256, L. 1993.
History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(part).

19-6-202. Repealed. Sec. 236, Ch. 256, L. 1993.
History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(part); amd. Sec. 7, Ch. 114, L. 1979.

19-6-203. Repealed. Sec. 236, Ch. 256, L. 1993.
History: En. Sec. 4, Ch. 37, L. 1945; R.C.M. 1947, 31-204; amd. Sec. 2, Ch. 235, L. 1981; amd. Sec. 14, Ch. 79, L. 1983; amd. Sec. 7, Ch. 282, L. 1983.

19-6-204. Terminated. Sec. 7, Ch. 328, L. 1987.
History: En. Sec. 3, Ch. 328, L. 1987.

Part 3
Eligibility, Membership, and Vesting

Part Cross-References

The Public Employees' Retirement Act — general provisions — termination of membership and refunds, Title 19, ch. 2, part 6.
PERS — membership, Title 19, ch. 3, part 4.
Judges' retirement — membership, Title 19, ch. 5, part 3.
Sheriffs' retirement — membership, Title 19, ch. 7, part 3.
Game wardens' and peace officers' retirement — membership, Title 19, ch. 8, part 3.
Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.
Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.
Teachers' retirement — membership, Title 19, ch. 20, part 3.

19-6-301. Membership — inactive vested members — inactive nonvested members. (1) All members of the Montana highway patrol, including the supervisor and assistant supervisors, must be members of the retirement system.

(2) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(3) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.
History: En. Sec. 7, Ch. 37, L. 1945; amd. Sec. 8, Ch. 326, L. 1974; amd. Sec. 3, Ch. 65, L. 1977; R.C.M. 1947, 31-207; amd. Sec. 113, Ch. 265, L. 1993.

Cross-References

Legislators — continued participation, 5-2-304.
Law enforcement reserve and auxiliary officers — participation prohibited, 7-32-202.
Highway patrol officers — transfer of retirement contributions upon transfer after injury, 44-1-518.

19-6-302. Repealed. Sec. 236, Ch. 265, L. 1993.

History: (1)En. Sec. 8, Ch. 37, L. 1945; amd. Sec. 4, Ch. 243, L. 1955; amd. Sec. 4, Ch. 65, L. 1977; Sec. 31-208, R.C.M. 1947; (2)En. Sec. 20, Ch. 37, L. 1945; amd. Sec. 3, Ch. 332, L. 1977; Sec. 31-220, R.C.M. 1947; R.C.M. 1947, 31-208(part), 31-220(part); amd. Sec. 7, Ch. 114, L. 1979.

19-6-303. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 23, Ch. 37, L. 1945; amd. Sec. 13, Ch. 243, L. 1955; amd. Sec. 11, Ch. 326, L. 1974; amd. Sec. 6, Ch. 361, L. 1974; amd. Sec. 8, Ch. 65, L. 1977; R.C.M. 1947, 31-223(1).

19-6-304. Renumbered 19-6-801 by Code Commissioner, 1993.

19-6-305. Renumbered 19-6-802 by Code Commissioner, 1993.

19-6-306. Renumbered 19-6-803 by Code Commissioner, 1993.

Part 4
Contributions and Refunds

Part Cross-References

Management and investment of pension trust funds, Title 19, ch. 2, part 5.
PERS — contributions, Title 19, ch. 3, part 3.
Judges' retirement fund — contributions, Title 19, ch. 5, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-6-401. Payments into pension trust fund. All appropriations made by the state, all contributions by members, in the amount specified, all interest on and increase of the investments and money under this pension trust fund, and a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121 must be paid to the pension trust fund.

History: En. Sec. 5, Ch. 37, L. 1945; amd. Sec. 1, Ch. 158, L. 1949; amd. Sec. 1, Ch. 176, L. 1953; amd. Sec. 202, Ch. 147, L. 1963; amd. Sec. 6, Ch. 326, L. 1974; R.C.M. 1947, 31-205(part); amd. Sec. 8, Ch. 282, L. 1983; amd. Sec. 5, Ch. 277, L. 1985; amd. Sec. 2, Ch. 62, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 816, L. 1991; amd. Sec. 114, Ch. 265, L. 1993.

Cross-References

General fiscal duties of State Treasurer, 17-1-111.
Fund structure, 17-2-102.
Judges' retirement — payments into pension trust fund, 19-5-401.
Sheriffs' retirement — sources of money in fund, 19-7-402.
Game wardens' and peace officers' retirement — contributions to pension trust fund, 19-8-501.
Police retirement — statewide plan — other money credited as employer contributions, 19-9-705.
Firefighters' unified retirement — other money credited as employer contributions, 19-13-607.
Teachers' retirement — method of financing, 19-20-601.

19-6-402. Member's contribution. (1) (a) A member not covered under 19-6-710 shall contribute into the pension trust fund 9% of the member's monthly compensation.

(b) A member covered under 19-6-710 shall contribute to the pension trust fund 9.05% of the member's monthly compensation.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and compensation as used to define the member's highest

average compensation in 19-6-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. Sec. 9, Ch. 37, L. 1945; amd. Sec. 5, Ch. 243, L. 1955; amd. Sec. 204, Ch. 147, L. 1963; amd. Sec. 2, Ch. 361, L. 1974; R.C.M. 1947, 31-209; amd. Sec. 2, Ch. 278, L. 1985; amd. Sec. 2, Ch. 294, L. 1985; amd. Sec. 10, Ch. 464, L. 1985; amd. Sec. 2, Ch. 816, L. 1991; amd. Sec. 115, Ch. 265, L. 1993; amd. Sec. 18, Ch. 287, L. 1997; amd. Sec. 53, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (4) near end of first sentence after "member's" substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Refund of contributions on termination of service, 19-2-602.
Reinstatement after withdrawal of contributions, 19-2-603.
Purchase of service credits allowed, 19-2-704.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Employer to furnish itemized statement of deductions, 39-3-101.

19-6-403. Refund of member's contribution. If a member willingly resigns or is discharged for cause before becoming entitled to a retirement benefit, the accumulated contributions standing to the member's credit must be paid to the member upon the member's filing of a written application with the board.

History: En. Sec. 17, Ch. 37, L. 1945; amd. Sec. 2, Ch. 109, L. 1947; amd. Sec. 10, Ch. 243, L. 1955; R.C.M. 1947, 31-217; amd. Sec. 7, Ch. 114, L. 1979; amd. Sec. 3, Ch. 278, L. 1985; amd. Sec. 2, Ch. 50, L. 1991; amd. Sec. 116, Ch. 265, L. 1993; amd. Sec. 54, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at end after "member's" substituted "filing of a written application with the board" for "written application to the board". Amendment effective March 21, 2001.

19-6-404. State's contribution. The state of Montana shall annually contribute to the pension trust fund an amount equal to 36.33% of the total compensation paid to the members from the following sources:

(1) an amount equal to 26.15% of the total compensation of the members is payable from the same source that is used to pay compensation to the members; and

(2) an amount equal to 10.18% of the total compensation of the members is payable from a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121.

History: En. Sec. 10, Ch. 37, L. 1945; amd. Sec. 6, Ch. 243, L. 1955; amd. Sec. 205, Ch. 147, L. 1963; amd. Sec. 3, Ch. 361, L. 1974; amd. Sec. 1, Ch. 350, L. 1975; R.C.M. 1947, 31-210; amd. Sec. 1, Ch. 226, L. 1979; amd. Sec. 12, Ch. 549, L. 1981; amd. Sec. 6, Ch. 277, L. 1985; amd. Sec. 4, Ch. 278, L. 1985; amd. Sec. 3, Ch. 294, L. 1985; amd. Sec. 3, Ch. 62, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 3, Ch. 816, L. 1991; amd. Sec. 117, Ch. 265, L. 1993; amd. Sec. 19, Ch. 287, L. 1997.

Cross-References

Payment of contributions by employers — accompanying reports — penalty, 19-2-506.

19-6-405 through 19-6-409. Repealed. Sec. 236, Ch. 265, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

19-6-405. En. Sec. 5, Ch. 37, L. 1945; amd. Sec. 1, Ch. 158, L. 1949; amd. Sec. 1, Ch. 176, L. 1953; amd. Sec. 202, Ch. 147, L. 1963; amd. Sec. 6, Ch. 326, L. 1974; R.C.M. 1947, 31-205(part); amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 2, Ch. 221, L. 1991.

19-6-406. En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(2).

19-6-407. En. Sec. 31-230 by Sec. 14, Ch. 243, L. 1955; amd. Sec. 14, Ch. 326, L. 1974; R.C.M. 1947, 31-230.

19-6-408. En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(3).

19-6-409. En. Sec. 3, Ch. 138, L. 1991.

Part 5

Service Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — service retirement, Title 19, ch. 3, part 9.
Judges' retirement — service retirement, Title 19, ch. 5, part 5.
Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.

Game wardens' and peace officers' retirement — service retirement, Title 19, ch. 8, part 6.
Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.
Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.
Teachers' retirement — superannuation retirement, Title 19, ch. 20, part 8.

19-6-501. Eligibility for service retirement benefit. A member has attained normal retirement age and is eligible to receive a service retirement benefit after completing 20 years or more of membership service and terminating service.

History: En. Sec 11, Ch. 37, L. 1945; amd. Sec. 9, Ch. 326, L. 1974; R.C.M. 1947, 31-211; amd. Sec. 2, Ch. 206, L. 1981; amd. Sec. 2, Ch. 53, L. 1983; amd. Sec. 5, Ch. 278, L. 1985; amd. Sec. 7, Ch. 196, L. 1989; amd. Sec. 121, Ch. 265, L. 1993; amd. Sec. 23, Ch. 370, L. 1997; amd. Sec. 55, Ch. 99, L. 2001; amd. Sec. 1, Ch. 193, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 99 in (1) and (2) after "1985" inserted "has attained normal retirement age and". The amendment in (2) was rendered void by Ch. 193. Amendment effective March 21, 2001.

Chapter 193 near beginning after "A member" deleted "first employed by the Montana highway patrol on or before July 1, 1985"; deleted former (2) that read: "(2) A member first employed by the Montana highway patrol after July 1, 1985, is eligible to receive a service retirement benefit when the member has reached age 50, completed 20 years or more of membership service, and terminated service"; and made minor changes in style. Amendment effective April 3, 2001.

19-6-502. Service retirement benefit. Upon retirement from service, a member must receive a service retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit.

History: En. Sec. 13, Ch. 37, L. 1945; amd. Sec. 4, Ch. 361, L. 1974; amd. Sec. 5, Ch. 65, L. 1977; R.C.M. 1947, 31-213; amd. Sec. 6, Ch. 278, L. 1985; amd. Sec. 4, Ch. 816, L. 1991; amd. Sec. 122, Ch. 265, L. 1993; amd. Sec. 56, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 near end after "member's" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

19-6-503. Early retirement benefit for member discontinued from service other than for cause. If a member is discontinued from service other than for cause after having completed 5 years of membership service but before reaching retirement age, the member must, upon filing a written application with the board, be paid an early retirement benefit that is of actuarial equivalent value to a service retirement based on a retirement age of 60.

History: En. Sec. 15, Ch. 37, L. 1945; amd. Sec. 8, Ch. 243, L. 1955; amd. Sec. 6, Ch. 65, L. 1977; R.C.M. 1947, 31-215; amd. Sec. 7, Ch. 114, L. 1979; amd. Sec. 3, Ch. 206, L. 1981; amd. Sec. 8, Ch. 278, L. 1985; amd. Sec. 123, Ch. 265, L. 1993; amd. Sec. 47, Ch. 562, L. 1999.

Cross-References

PERS — early retirement benefit, 19-3-906.
Judges' retirement — involuntary retirement benefit, 19-5-503.
Game wardens' and peace officers' retirement — early retirement benefit, 19-8-604.
Firefighters' retirement — partial service pension, 19-18-603.
Teachers' retirement — early retirement, 19-20-802.

19-6-504. Repealed. Sec. 13, Ch. 86, L. 1985.

History: En. Sec. 16, Ch. 37, L. 1945; amd. Sec. 9, Ch. 243, L. 1955; R.C.M. 1947, 31-216.

19-6-505. Payment of retirement benefits. (1) The service retirement benefit must be paid to the retired member for the remainder of the member's life.

(2) Upon the retired member's death, the retirement benefit must be paid to the member's surviving spouse, if there is one.

(3) (a) If upon the retired member's death there is no surviving spouse or if the spouse dies, the retirement benefit must be paid as provided in subsection (3)(c) to the retired member's child, if there is one, for as long as the child remains a dependent child.

(b) If there is more than one dependent child, the retirement benefit must be paid as provided in subsection (3)(c) to the children collectively. When a child is no longer a dependent child, the pro rata payments to that child must cease and be made to the remaining child or children until all the children are no longer dependent.

(c) Payments to a dependent child must be made to the child's appointed guardian for the child's use.

(4) If a retired member dies without a surviving spouse or dependent child, the member's designated beneficiary must be paid the amount, if any, of the retired member's accumulated

contributions minus the total of any retirement benefits already paid from the member's account.

History: En. Sec. 7, Ch. 278, L. 1985; amd. Sec. 1, Ch. 63, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 124, Ch. 265, L. 1993; amd. Sec. 48, Ch. 562, L. 1999; amd. Sec. 57, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (4) near middle after "dependent child" deleted "and if the member had designated a beneficiary as provided in 19-2-801"; deleted former (5) that read: "(5) If the retired member did not designate a beneficiary or if the beneficiary predeceased the retired patrol officer, the amount provided in subsection (4) must be paid to the member's estate"; and made minor changes in style. Amendment effective March 21, 2001.

19-6-506. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 627, L. 1989; amd. Sec. 18, Ch. 16, L. 1991; amd. Secs. 1, 3, Ch. 735, L. 1991.

Part 6
Disability Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — disability retirement, Title 19, ch. 3, part 10.
Judges' retirement — disability retirement benefits, Title 19, ch. 5, part 6.
Sheriffs' retirement — disability retirement benefits, Title 19, ch. 7, part 6.
Game wardens' and peace officers' retirement — disability retirement benefits, Title 19, ch. 8, part 7.
Police retirement — statewide plan — disability retirement benefits, Title 19, ch. 9, part 9.
Firefighters' unified retirement — disability retirement benefits, Title 19, ch. 13, part 8.
Teachers' retirement — disability retirement, Title 19, ch. 20, part 9.

19-6-601. Disability retirement benefit. (1) In the case of the disability of a member, a disability retirement benefit must be granted the member that is the actuarial equivalent of the service retirement benefit under 19-6-502 standing to the member's credit at the time of the member's disability retirement. If the disability is a direct result of any service to the Montana highway patrol in the line of duty, then the member who is disabled must be retired on a disability retirement benefit of one-half the member's highest average compensation regardless of the member's length of service.

(2) Upon the death of a retired member receiving a disability retirement benefit as provided in subsection (1), the benefit must be paid to the member's surviving spouse or dependent child, if there is a spouse or child, in the same manner as provided for in 19-6-505(2) and (3).

History: En. Sec. 14, Ch. 37, L. 1945; amd. Sec. 1, Ch. 109, L. 1947; R.C.M. 1947, 31-214; amd. Sec. 7, Ch. 114, L. 1979; amd. Sec. 9, Ch. 278, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 125, Ch. 265, L. 1993; amd. Sec. 58, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) near end of second sentence after "member's" substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Disability benefits — exclusion from income tax, 15-30-111.
Disability defined, 19-2-303.
Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.
Salary benefit to injured officer — discontinuance, 44-1-514.
Highway patrol officers — transfer of retirement contributions upon transfer after injury, 44-1-518.

19-6-602. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 22, Ch. 37, L. 1945; amd. Sec. 1, Ch. 107, L. 1967; amd. Sec. 10, Ch. 326, L. 1974; amd. Sec. 7, Ch. 65, L. 1977; R.C.M. 1947, 31-222; amd. Sec. 7, Ch. 114, L. 1979; amd. Sec. 10, Ch. 278, L. 1985; amd. Sec. 8, Ch. 196, L. 1989.

19-6-603. Renumbered 19-6-901 by Code Commissioner, 1993.

19-6-604. Renumbered 19-6-902 by Code Commissioner, 1993.

19-6-605 through 19-6-610 reserved.

19-6-611. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 3, Ch. 597, L. 1981.

19-6-612. Medical examination of disability retiree — cancellation of benefit. (1) The board may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may file a written application with the board requesting that the board reconsider its action. The request for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) The department of justice may request a medical or psychological review as to the ability of the recipient to return to work as a member of the highway patrol. If the board's findings are upheld, the department of justice shall pay the cost of the review.

History: En. Sec. 4, Ch. 597, L. 1981; amd. Sec. 2, Ch. 138, L. 1989; amd. Sec. 126, Ch. 265, L. 1993; amd. Sec. 15, Ch. 412, L. 1995; amd. Sec. 24, Ch. 370, L. 1997; amd. Sec. 49, Ch. 562, L. 1999; amd. Sec. 59, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (2) near middle of third sentence after "recipient may" substituted "file a written application with the board requesting that the board" for "submit a written application to the board to request the board to" and in fourth sentence after "must be" substituted "filed" for "made in writing". Amendment effective March 21, 2001.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1015.

Judges' retirement — medical examination of disability retiree — cancellation of benefit, 19-5-612.

Sheriffs' retirement — medical examination of disability retiree — cancellation of benefit, 19-7-612.

Game wardens' and peace officers' retirement — medical examination of disability retiree — cancellation of benefit, 19-8-712.

Police retirement — statewide plan — disability — reinstatement upon termination of benefit, 19-9-905.

Firefighters' unified retirement — medical examination of disability retiree — cancellation of benefit, 19-13-804.

Teachers' retirement — medical examination of disability retiree, 19-20-903.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-20-905.

Part 7
Postretirement Benefits and Benefit Increases

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.

Exemption from taxes and legal process — exceptions, 19-2-1004.

PERS — minimum benefits and benefit increases, Title 19, ch. 3, part 16.

Sheriffs' retirement — minimum benefits and benefit increases, Title 19, ch. 7, part 7.

Police retirement — statewide plan — minimum benefits and benefit increases, Title 19, ch. 9, part 10.

Firefighters' unified retirement — minimum benefits and benefit increases, Title 19, ch. 13, part 10.

19-6-701. Repealed. Sec. 14, Ch. 278, L. 1985.

History: En. 31-228 by Sec. 14, Ch. 243, L. 1955; amd. Sec. 13, Ch. 326, L. 1974; amd. Sec. 9, Ch. 65, L. 1977; R.C.M. 1947, 31-228.

19-6-702 through 19-6-706. Repealed. Sec. 236, Ch. 265, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

19-6-702. En. Sec. 20, Ch. 37, L. 1945; amd. Sec. 3, Ch. 332, L. 1977; R.C.M. 1947, 31-220(part).

19-6-703. En. Sec. 25, Ch. 37, L. 1945; R.C.M. 1947, 31-225; amd. Sec. 7, Ch. 114, L. 1979.

19-6-704. En. Sec. 24, Ch. 37, L. 1945; amd. Sec. 12, Ch. 326, L. 1974; R.C.M. 1947, 31-224(1)(b); amd. Sec. 7, Ch. 114, L. 1979.

19-6-705. En. Sec. 21, Ch. 37, L. 1945; amd. Sec. 3, Ch. 214, L. 1977; R.C.M. 1947, 31-221; amd. Sec. 11, Ch. 464, L. 1985; amd. Sec. 9, Ch. 823, L. 1991.

19-6-706. En. 31-221.1 by Sec. 4, Ch. 214, L. 1977; R.C.M. 1947, 31-221.1.

19-6-707. Minimum monthly benefit. (1) Subject to the limitations contained in subsection (2), the following retired members, or their survivors, who are not covered by 19-6-710 are eligible to receive a monthly benefit of not less than 2% multiplied by the member's service credits multiplied by the current base compensation received by a probationary highway patrol officer:

(a) a retired member who is 55 years of age or older, except as provided in subsection (3), or the member's survivor, who is receiving a service retirement benefit;

(b) a retired member, or the member's survivor, who is receiving a disability retirement benefit; and

(c) a recipient of a survivorship benefit.

(2) (a) The maximum monthly benefit paid under subsection (1) may not exceed 60% of the current base compensation of a probationary highway patrol officer.

(b) The annual increase in a monthly benefit under subsection (1) may not exceed 5% of the current monthly benefit paid to a retired member or the member's survivor.

(3) A retired member otherwise qualified under subsection (1)(a) who is employed in a position covered by a retirement system under Title 19 is ineligible to receive the minimum monthly benefit provided for in this section until the member's service in the covered position is terminated.

History: En. Sec. 1, Ch. 294, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 130, Ch. 265, L. 1993; amd. Sec. 20, Ch. 287, L. 1997.

19-6-708. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 14, L. 1987.

19-6-709. *(Temporary)* **Supplemental benefits for certain retirees.** (1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection (2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, may not be covered by 19-6-710, and must be:

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability benefit under 19-6-601 or a survivorship benefit under 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until the member's service in the covered position is terminated. Upon termination of the member's covered service, the retired member becomes eligible in the next fiscal year succeeding the member's termination.

(4) The lump-sum payment must be distributed proportionally to all eligible recipients based on service credit at the time of retirement, subject to the following:

(a) a recipient under subsection (2)(c) is considered to have 20 years of service for the purposes of the distributions;

(b) any recipient of a service retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

(c) the maximum annual increase in the amount of supplemental benefits paid to each individual under this section is the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency. *(Terminates upon death of last eligible recipient—sec. 1, Ch. 567, L. 1991.)*

History: En. Sec. 1, Ch. 567, L. 1991; amd. Sec. 3, Ch. 735, L. 1991; amd. Sec. 131, Ch. 265, L. 1993; amd. Sec. 21, Ch. 287, L. 1997; amd. Sec. 21, Ch. 532, L. 1997; amd. Sec. 50, Ch. 562, L. 1999; amd. Sec. 60, Ch. 99, L. 2001; amd. Sec. 4, Ch. 191, L. 2001; amd. Sec. 108, Ch. 574, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 99 in (2)(c) after "disability" inserted "benefit under 19-6-601" and after "survivorship benefit under" deleted "19-6-601 or"; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 191 in (4)(a) in first sentence at beginning substituted "The amount of" for "An amount equal to 25 cents of" and near middle substituted "referred to in 61-3-321(5)(b) and (5)(c) and the fees collected under 61-3-527(4)(b) and 61-3-562(1)(b)" for "provided for in 61-3-321(5)"; in (5) near beginning after "the board shall review" substituted "the amount paid" for "the size of the additional fee collected under 61-3-321(5) and paid"; and made minor changes in style. Amendment effective April 3, 2001. The amendment by Ch. 574 rendered the amendment by Ch. 191 void.

Chapter 574 deleted former (4)(a) that read: "(a) An amount equal to 25 cents of each motor vehicle registration fee provided for in 61-3-321(5) must be paid from the general fund to the pension trust fund at the end of each fiscal year. The payment is statutorily appropriated, as provided in 17-7-502, to the pension fund for payment of benefits to eligible recipients. The total funds must be distributed by the board in lump-sum payments to eligible recipients along with their normal retirement benefit payment"; deleted former (4)(c) that read: "(c) Any amount deposited in the pension trust fund under subsection (4)(a) for the payment of supplemental benefits under this section that exceeds the limitation of subsection (4)(b)(iii) must be used to amortize unfunded liabilities of the retirement system"; deleted former (5) that read: "(5) Every 10 years following July 1, 1991, the board shall review the size of the additional fee collected under 61-3-321(5) and paid to the pension trust fund in accordance with subsection (4)(a) and recommend to each legislature following the board's review any legislation necessary to reduce the fee to the minimum amount necessary to provide the supplemental benefits provided by this section"; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

Contingent Termination — Disposition of Funds: Section 7, Ch. 567, L. 1991, provided: "(1) The provisions of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] terminate upon the death of the last recipient eligible under [section 1(2)] [19-6-709(2)] for the supplemental benefit provided by [section 1] [19-6-709].

(2) Money collected for the purposes of the supplemental payment under [section 1] [19-6-709] that remains in the account, meaning the highway patrol officers' retirement pension trust fund, upon termination of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] must be used to amortize unfunded liabilities of the account."

Cross-References

PERS — adjustment of benefit for certain members, 19-3-905.

Police retirement — statewide plan — supplement to certain benefits, 19-9-1007.

Police retirement — local funds — supplement to certain pensions, 19-19-506.

19-6-710. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section.

History: En. Sec. 3, Ch. 287, L. 1997; amd. Sec. 51, Ch. 562, L. 1999; amd. Sec. 3, Ch. 62, L. 2001; amd. Sec. 8, Ch. 149, L. 2001; amd. Sec. 3, Ch. 309, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3)(a) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-6-711. Election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-6-710 remains valid. The decision of a member who elected not to participate under 19-6-710 may be reversed under this section.

History: En. Sec. 9, Ch. 149, L. 2001.

Compiler's Comments

Effective Date: Section 22, Ch. 149, L. 2001, provided that this section is effective on passage and approval. Approved March 29, 2001.

Part 8
Service Credit

Part Cross-References

The Public Employees' Retirement Act — general provisions — service credit and additional contributions, Title 19, ch. 2, part 7.

19-6-801. Application to purchase military service. (1) Except as otherwise provided in this section and subject to 19-6-805, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits.

(2) To purchase this military service:

(a) a member who is not covered by 19-6-710 shall contribute the amount determined by the board to be due based on the member's compensation and regular contribution rate in the member's 16th year for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase, with regular interest from the date the member becomes eligible for this benefit to the date the purchase is complete. The member may not purchase more military service under this subsection (2)(a) than the member has service credit in excess of 15 years.

(b) a member who is covered by 19-6-710 shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

(3) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

History: En. Sec. 23, Ch. 37, L. 1945; amd. Sec. 13, Ch. 243, L. 1955; amd. Sec. 11, Ch. 326, L. 1974; amd. Sec. 6, Ch. 361, L. 1974; amd. Sec. 8, Ch. 65, L. 1977; R.C.M. 1947, 31-223(2); amd. Sec. 118, Ch. 265, L. 1993; Sec. 19-6-304, MCA 1991; redes. 19-6-801 by Code Commissioner, 1993; amd. Sec. 22, Ch. 287, L. 1997; amd. Sec. 28, Ch. 58, L. 1999; amd. Sec. 52, Ch. 562, L. 1999; amd. Sec. 61, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning of (1) inserted exception clause, near beginning after "member with" substituted "at least 15 years of service credit" for "15 years or more of service credit with the Montana highway patrol", near middle after "prior to retirement" substituted "file a written application with the board to purchase up to 5 years" for "make a written election with the board to qualify all or any portion", and at end deleted "up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to 19-2-707"; in (2) in introductory clause substituted "purchase this military service" for "qualify this service"; in (2)(a) near beginning of first sentence after "contribute" deleted "to the account", near middle after "16th year" substituted "for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase, with regular interest" for "and as many succeeding years as are required to qualify this service, with interest", and at end substituted "purchase is complete" for "member contributes" and in second sentence after "member may not" substituted "purchase more military service under this subsection (2)(a)" for "qualify more of this service" and after "member has service" substituted "credit" for "with the Montana highway patrol"; in (2)(b) after "shall" substituted "pay the actuarial cost of the member's military service" for "contribute the actuarial cost of the service credit"; inserted (3) outlining conditions that preclude a member from purchasing military service; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Veteran defined, 10-2-101.
Reemployment of public employee upon completion of military service, 10-2-221.
PERS — election to qualify military service, 19-3-503.
Sheriffs' retirement — election to qualify previous military service, 19-7-803.
Game wardens' and peace officers' retirement — election to qualify military service, 19-8-901.
Police retirement — statewide plan — election to qualify previous military service, 19-9-403.
Firefighters' unified retirement — election to qualify previous military service, 19-13-403.
Police retirement — local funds — election to qualify previous military service, 19-19-406.
Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-20-404.

19-6-802. Purchase of other Montana public service. (1) (a) A member may, at any time before retirement, file a written application with the board to purchase all or any portion of the member's service in the public employees', sheriffs', game wardens' and peace officers', firefighters' unified, or municipal police officers' retirement system to the extent that the member either has received or is eligible to receive a refund of the member's membership contributions. To purchase this service, the member shall pay the actuarial cost of the service in the highway patrol officers' retirement system, as determined by the board, based on the system's most recent actuarial valuation minus the employer contribution provided in subsection (1)(b).

(b) Upon receiving the member's payment under subsection (1)(a), the board shall transfer from the member's former retirement system to the highway patrol officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the highway patrol officers' retirement system, according to the most recent actuarial valuation.

(2) (a) A member may, at any time before retirement, file a written application with the board to purchase all or a portion of full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and employment documentation certified by the member's public employer. The board shall grant service credit subject to the board's rules. To purchase service under this section, the employee shall pay the actuarial cost of the service in the highway patrol officers' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

History: **En. Sec. 2, Ch. 145, L. 1981; amd. Sec. 2, Ch. 331, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 119, Ch. 265, L. 1993; Sec. 19-6-305, MCA 1991; redes. 19-6-802 by Code Commissioner, 1993; amd. Sec. 16, Ch. 412, L. 1995; amd. Sec. 53, Ch. 51, L. 1999; amd. Sec. 53, Ch. 562, L. 1999; amd. Sec. 62, Ch. 99, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 99 in (1)(a) near beginning of first sentence after "before retirement" substituted "file a written application with the board to purchase" for "make a written election with the board to qualify" and at beginning of second sentence substituted "To purchase" for "To qualify" and after "member shall" substituted "pay the actuarial cost of the service" for "contribute to the pension trust fund the actuarial cost of granting the service credit"; in (2)(a) near beginning of first sentence after "before retirement" substituted "file a written application with the board to purchase all or a portion of" for "make a written election with the board to qualify any" and at beginning of fourth sentence substituted "To purchase service under this section, the employee shall pay the actuarial cost of the service" for "upon contribution by the employee of the actuarial cost of granting this service"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

PERS — qualification of other Montana public service, 19-3-509.

Sheriffs' retirement — service under municipal police officers' retirement system prior to or following city-county consolidation, 19-7-801.

Sheriffs' retirement — qualification of other Montana public service, 19-7-802.

Game wardens' and peace officers' retirement — qualification of other Montana public service, 19-8-902.

Police retirement — statewide plan — service under Sheriffs' retirement system prior to or following city-county consolidation, 19-9-404.

Police retirement — statewide plan — qualification of other Montana public service, 19-9-405.

Firefighters' unified retirement — qualification of other Montana public service, 19-13-404.

19-6-803. Application to purchase law enforcement service performed in another state. (1) Subject to 19-6-805, a member with at least 5 years of service credit may, at any time before retirement, file a written application with the board to purchase 1 year of out-of-state law enforcement employment for each year of service credit, unless the member is eligible to receive a retirement benefit in another system or plan for that same service.

(2) To purchase this service, a member shall pay the actuarial cost of the service in the retirement system, as determined by the board, based on:

(a) the member's compensation for the 12 months immediately preceding the date of the member's election to cover the service under the retirement system; and

(b) the actuarial rate in effect at the time of purchase of service.

(3) Service purchased under this section may not be used to qualify a member to purchase military service under 19-6-801.

(4) Service purchased under this section may not be used in calculating a member's retirement benefit unless the last 5 years of service credit were earned under the retirement system. If, upon retirement, a member's purchased service may not be used in calculating the member's retirement benefit, the member must receive a refund of the amount paid by the member to purchase the service, plus regular interest on that amount.

History: **En. Sec. 1, Ch. 142, L. 1991; amd. Sec. 120, Ch. 265, L. 1993; Sec. 19-6-306, MCA 1991; redes. 19-6-803 by Code Commissioner, 1993; amd. Sec. 29, Ch. 58, L. 1999; amd. Sec. 54, Ch. 562, L. 1999; amd. Sec. 63, Ch. 99, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 99 in (1) at beginning substituted "Subject to 19-6-805, a member with at least 5 years of service credit may, at any time before retirement, file a written application with the board to purchase" for "Except as provided in subsections (3) through (5), a member with 5 years or more of membership service in the retirement system may qualify", near middle after "service credit" substituted "unless the member is eligible" for "under the retirement system, up to a maximum of 5 years, provided that the member is not eligible", and after "retirement benefit" substituted "in another system or plan for that same service" for "for that out-of-state law enforcement employment"; in introductory clause of (2) substituted "To purchase" for "To qualify" and after "member shall" substituted "pay the actuarial cost of the service" for "(a) at any time before the member's retirement, make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service"; at beginning of (3) and (4) substituted "Service purchased" for "Service qualified"; at beginning of second sentence of (4) substituted "If, upon retirement, a member's purchased service" for "If a member's qualified service" and at end after "the member" substituted "must receive a refund of the amount paid by the member to purchase the service, plus regular interest on that amount" for "may choose to receive a refund of the contributions made to qualify the service"; deleted former (5) that read: "(5) The combined total service qualified under this section and military service qualified under 19-6-801 may not exceed 5 years"; and made minor changes in style. Amendment effective March 21, 2001.

19-6-804. Application to purchase additional service. (1) Subject to 19-6-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service that the member has in the retirement system.

(2) To purchase service under this section, a member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation as determined by the board.

(3) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement.

History: En. Sec. 2, Ch. 180, L. 1995; amd. Sec. 30, Ch. 58, L. 1999; amd. Sec. 64, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning of (1) substituted "Subject to 19-6-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase" for "At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase" and near end substituted "in" for "qualified under"; at beginning of (2) substituted "To purchase service under this section, a member shall pay the actuarial cost of the service" for "For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service"; deleted former (3) that read: "(3) A member may elect to qualify no more than a combined total of 5 years of service under 19-2-707, 19-6-801, 19-6-803, and this section"; and made minor changes in style. Amendment effective March 21, 2001.

19-6-805. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service under 19-6-801, 19-6-803, and 19-6-804.

History: En. Sec. 65, Ch. 99, L. 2001.

Compiler's Comments

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

19-6-806 through 19-6-809 reserved.

19-6-810. Absence because of illness or injury. (1) Time, not to exceed 5 years, during which a member is absent from service because of injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined by the board to have arisen out of and in the course of the member's employment. However, the member may not purchase service credit for this period unless the member complies with subsections (2) through (4), in which case the absence is considered as time spent in service for both service credit and membership service.

(2) After returning to service and while still in service, a member desiring service credit for the period of time referred to in subsection (1) shall file with the board a written application to pay the contributions under subsection (3).

(3) (a) A member eligible to purchase service credit pursuant to subsection (1) shall contribute to the retirement system an amount equal to the contributions that would have been made by the member to the system during the member's period of absence on the basis of the member's compensation immediately prior to the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to service to the date the member contributes for the period of absence.

(b) If a member elects to contribute under subsection (3)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (3)(a) and shall pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (3)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(4) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions have been refunded pursuant to 19-2-602. The member loses the right to contribute for the period of time during which retirement benefits have been received if the member retires during the absence.

History: En. Sec. 55, Ch. 562, L. 1999; amd. Sec. 66, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) near beginning of second sentence after "member may not" substituted "purchase service credit" for "earn service credits" and near end after "both" substituted "service credit" for "service credits"; and in (3)(a) near beginning after "eligible to" substituted "purchase service credit" for "earn service credits". Amendment effective March 21, 2001.

Part 9
Survivorship Benefits and Death Payments

Part Cross-References

Beneficiaries, Title 19, ch. 2, part 8.
Designation of beneficiary, 19-2-801.
Limitations on payment of benefits to person causing member's death or disability, 19-2-804.
Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.

19-6-901. Survivorship benefits — employment-related death. (1) If the board finds that a member died as a direct and proximate result of injury received in the course of the member's service, a survivorship benefit must be paid to the member's surviving spouse or dependent child in the same manner as provided for in 19-6-505(2) through (4).

(2) The retirement benefit must equal 50% of the highest average compensation of the member.

History: En. Sec. 18, Ch. 37, L. 1945; amd. Sec. 11, Ch. 243, L. 1955; R.C.M. 1947, 31-218; amd. Sec. 7, Ch. 114, L. 1979; amd. Sec. 11, Ch. 278, L. 1985; amd. Sec. 127, Ch. 265, L. 1993; Sec. 19-6-603, MCA 1991; redes. 19-6-901 by Code Commissioner, 1993; amd. Sec. 67, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (2) after "50% of the" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

19-6-902. Survivorship benefits — death from other causes. If an active or inactive member dies before reaching retirement age, the member's surviving spouse or dependent child must be paid a survivorship benefit that is the actuarial equivalent of the early retirement benefit provided in 19-6-503, in the same manner as provided for in 19-6-505(2) through (4).

History: En. Sec. 19, Ch. 37, L. 1945; amd. Sec. 12, Ch. 243, L. 1955; R.C.M. 1947, 31-219; amd. Sec. 12, Ch. 278, L. 1985; amd. Sec. 128, Ch. 265, L. 1993; Sec. 19-6-604, MCA 1991; redes. 19-6-902 by Code Commissioner, 1993; amd. Sec. 68, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning substituted "If an active or inactive member" for "If a member" and at end substituted "19-6-505(2) through (4)" for "19-6-505". Amendment effective March 21, 2001.

19-6-903. Death payments in absence of survivors. If, after a member's death, a benefit is not paid pursuant to 19-6-505, 19-6-601, 19-6-901, or 19-6-902, then the member's designated beneficiary must be paid an amount equal to the member's accumulated contributions minus the total of any benefits already paid from the member's account.

History: En. Sec. 129, Ch. 265, L. 1993; amd. Sec. 69, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 substituted language regarding payment of contributions to the member's designated beneficiary for former language that read: "If upon the member's death before retirement there is no surviving spouse or dependent child and if the member had designated a beneficiary as provided in 19-2-801, the designated beneficiary must be paid an amount equal to the member's accumulated contributions. If there is no designated beneficiary, death payments must be paid to the member's estate." Amendment effective March 21, 2001.

CHAPTER 7

SHERIFFS' RETIREMENT

Part 1 — General Provisions

19-7-101. Definitions.
19-7-102. Sheriffs' retirement system established.
19-7-103. Renumbered 19-2-905.
19-7-104. Repealed.
19-7-105. Short title.

Part 2 — Administration (Repealed and Terminated)

19-7-201. Repealed.
19-7-202. Repealed.
19-7-203. Terminated.

Part 3 — Eligibility, Membership, and Vesting

19-7-301. Membership — inactive vested members — inactive nonvested members.
19-7-302. Ineligibility for membership in public employees' retirement system.
19-7-303. Repealed.
19-7-304. Repealed.
19-7-305. Repealed.
19-7-306. Repealed.
19-7-307. Repealed.
19-7-308 through 19-7-311. Renumbered by Code Commissioner, 1993.
19-7-312. Transfer of membership — qualification of previous service.

Part 4 — Contributions and Refunds

19-7-401. Repealed.
19-7-402. Sources of money in fund.
19-7-403. Member's contributions deducted.
19-7-404. Employer contributions.
19-7-405 through 19-7-409. Repealed.

Part 5 — Service Retirement Benefits

19-7-501. Eligibility for service retirement.
19-7-502. Early retirement option.
19-7-503. Service retirement benefit.
19-7-504. Repealed.

Part 6 — Disability Retirement Benefits

19-7-601. Disability retirement benefit.
19-7-602. Repealed.
19-7-603. Repealed.
19-7-604. Renumbered 19-7-901 by Code Commissioner, 1993.
19-7-605 through 19-7-610 reserved.
19-7-611. Repealed.
19-7-612. Medical examination of disability retiree — cancellation of benefit.

Part 7 — Postretirement Benefits and Benefit Increases

19-7-701. Renumbered 19-7-1001 by Code Commissioner, 1993.
19-7-702 through 19-7-707. Repealed.
19-7-708. Repealed.
19-7-709. Repealed.
19-7-710. Repealed.
19-7-711. Guaranteed annual benefit adjustment.

Part 8 — Service Credit

19-7-801. Membership in municipal police officers' retirement system prior to or following city-county consolidation — payment of benefits by two systems.
19-7-802. Purchase of other Montana public service.
19-7-803. Application to purchase military service.
19-7-804. Application to purchase additional service.
19-7-805. Service purchase limitation.

19-7-806 through 19-7-809 reserved.
19-7-810. Absence because of illness or injury.

Part 9 — Survivorship Benefits and Death Payments

19-7-901. Payments in case of death before retirement.

Part 10 — Optional Forms of Retirement Benefits

19-7-1001. Optional forms of benefits — designation of contingent annuitant.

Part 11 — Reemployment of Retired Members

19-7-1101. Reemployment of retired member.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Sheriff's Department, Title 7, ch. 32, part 21.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
The Public Employees' Retirement Act — general provisions, Title 19, ch. 2.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement system, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.

Part 1
General Provisions

19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code are made and exclusive of maintenance, allowances, and expenses.

(2) "Highest average compensation" means the highest average monthly compensation received by a member for any 3 years of continuous service from which contributions were deducted or, in the event that a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to an employee upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(3) "Investigator" means a person who is employed as a criminal investigator or as a gambling investigator for the department of justice.

(4) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff with the requisite professional certification and licensing.

History: Ap. p. Sec. 2, Ch. 178, L. 1974; amd. Sec. 1, Ch. 59, L. 1977; amd. Sec. 17, Ch. 332, L. 1977; Sec. 68-2602, R.C.M. 1947; Ap. p. Sec. 3, Ch. 178, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; Sec. 68-2603, R.C.M. 1947; R.C.M. 1947, 68-2602, 68-2603; amd. Sec. 8, Ch. 114, L. 1979; amd. Sec. 9, Ch. 282, L. 1983; amd. Sec. 1, Ch. 401, L. 1985; amd. Sec. 5, Ch. 45, L. 1987; amd. Sec. 62, Ch. 370, L. 1987; amd. Sec. 9, Ch. 196, L. 1989; amd. Sec. 2, Ch. 261, L. 1993; amd. Sec. 134, Ch. 265, L. 1993; amd. Sec. 17, Ch. 412, L. 1995; amd. Sec. 31, Ch. 58, L. 1999; amd. Sec. 70, Ch. 99, L. 2001; amd. Sec. 10, Ch. 149, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 99 substituted highest average compensation for final average salary as defined term, near beginning of first sentence of definition after "means the" inserted "highest", and at end of second sentence substituted "highest average compensation" for "final average salary"; and at end of definition of sheriff inserted "with the requisite professional certification and licensing" and deleted former second sentence that read: "The board shall adopt rules incorporating both the peace officers standards and training council's current law enforcement training requirements and the legislatively authorized salary requirements as effective for deputy sheriffs who are eligible for membership in this retirement system." Amendment effective March 21, 2001.

Chapter 149 in definition of final average salary near beginning of second sentence after "payments for" inserted "severance pay, including payment for compensatory leave"; and made minor changes in style. Amendment effective March 29, 2001.

19-7-102. Sheriffs' retirement system established. A retirement plan is established and known as the sheriffs' retirement system. The plan is governed by the provisions of chapter 2 and this chapter.

History: En. 68-2601 by Sec. 1, Ch. 178, L. 1974; R.C.M. 1947, 68-2601; amd. Sec. 6, Ch. 261, L. 1993; amd. Sec. 133, Ch. 265, L. 1993; amd. Sec. 56, Ch. 562, L. 1999.

Cross-References

Public Employees' Retirement Board — administration, Title 19, ch. 2, part 4.

19-7-103. Renumbered 19-2-905. Sec. 238, Ch. 265, L. 1993.

19-7-104. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2623 by Sec. 23, Ch. 178, L. 1974; R.C.M. 1947, 68-2623(1), (3).

19-7-105. Short title. This chapter may be cited as "The Sheriffs' Retirement Act".

History: En. Sec. 132, Ch. 265, L. 1993.

Part 2
Administration
(Repealed and Terminated)

19-7-201. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2604 by Sec. 4, Ch. 178, L. 1974; amd. Sec. 2, Ch. 59, L. 1977; amd. Sec. 18, Ch. 332, L. 1977; R.C.M. 1947, 68-2604(1).

19-7-202. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2609 by Sec. 9, Ch. 178, L. 1974; R.C.M. 1947, 68-2609(part); amd. Sec. 3, Ch. 235, L. 1981; amd. Sec. 15, Ch. 79, L. 1983; amd. Sec. 10, Ch. 282, L. 1983.

19-7-203. Terminated. Sec. 7, Ch. 328, L. 1987.

History: En. Sec. 3, Ch. 328, L. 1987.

Part 3
Eligibility, Membership, and Vesting

Part Cross-References

The Public Employees' Retirement Act — general provisions — termination of membership and refunds, Title 19, ch. 2, part 6.

PERS — membership, Title 19, ch. 3, part 4.

Judges' retirement — membership, Title 19, ch. 5, part 3.

Highway patrol retirement — membership, Title 19, ch. 6, part 3.

Game wardens' and peace officers' retirement — membership, Title 19, ch. 8, part 3.

Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.

Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.

Teachers' retirement — membership, Title 19, ch. 20, part 3.

19-7-301. Membership — inactive vested members — inactive nonvested members. (1) (a) Except as provided in subsection (1)(b), each sheriff shall become a member of the sheriffs' retirement system.

(b) A sheriff who was a member of the public employees' retirement system on July 1, 1974, may remain a public employees' retirement system member or elect to become a member of the sheriffs' retirement system by filing a written election with the board at any time before retirement.

(2) (a) Except as provided in subsection (2)(b), an investigator must become a member of the sheriffs' retirement system.

(b) An investigator who was a member of the public employees' retirement system on July 1, 1993, may remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board at any time before retirement.

(3) A member of the public employees' retirement system who begins employment in a position covered by the sheriffs' retirement system may remain in the public employees' retirement system or may elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 30 days after beginning the employment.

(4) A sheriff or investigator who elects to become a member of the sheriffs' retirement system must be an active member as long as actively employed in an eligible capacity, except as provided in 19-7-1101(2).

(5) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(6) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

History: En. 68-2607 by Sec. 7, Ch. 178, L. 1974; amd. Sec. 3, Ch. 59, L. 1977; R.C.M. 1947, 68-2607(part); amd. Sec. 1, Ch. 81, L. 1987; amd. Sec. 3, Ch. 261, L. 1993; amd. Sec. 135, Ch. 265, L. 1993; amd. Sec. 1, Ch. 248, L. 1997; amd. Sec. 71, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning of (1)(a) inserted exception clause; in (1)(b) after "1974" substituted "may remain a public employees' retirement system member or elect to become" for "in which case the sheriff may at the sheriff's option become" and at end inserted "by filing a written election with the board at any time before retirement"; at beginning of (2)(a) inserted exception clause; in (2)(b) after "1993" substituted "may remain in the public employees' retirement system or elect to become" for "in which case the investigator has the option of becoming" and at end inserted "by filing a written election with the board at any time before retirement"; inserted (3) allowing a member of the public employees' retirement system who begins employment in a position covered by the sheriffs' retirement system to remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system; in (4) near middle after "retirement system" substituted "must be an active member" for "shall remain members" and at end substituted "19-7-1101(2)" for "19-7-1101"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Legislators — continued participation, 5-2-304.

Law enforcement reserve and auxiliary officers — participation prohibited, 7-32-202.

19-7-302. Ineligibility for membership in public employees' retirement system. (1) After July 1, 1974, a sheriff may not become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to sheriffs.

(2) After July 1, 1993, an investigator is not eligible to become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to investigators, except as provided in 19-7-301.

(3) This chapter may not be construed to deny any sheriff or investigator any benefits accrued under provisions of the public employees' retirement system prior to membership in this retirement system.

History: En. 68-2628 by Sec. 28, Ch. 178, L. 1974; amd. Sec. 12, Ch. 59, L. 1977; R.C.M. 1947, 68-2628; amd. Sec. 4, Ch. 261, L. 1993; amd. Sec. 136, Ch. 265, L. 1993.

Cross-References

The Public Employees' Retirement System Act, 19-3-101.

PERS — membership, Title 19, ch. 3, part 4.

19-7-303. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2622 by Sec. 22, Ch. 178, L. 1974; amd. Sec. 9, Ch. 59, L. 1977; R.C.M. 1947, 68-2622.

19-7-304. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2615 by Sec. 15, Ch. 178, L. 1974; R.C.M. 1947, 68-2615(1); amd. Sec. 3, Ch. 50, L. 1991.

19-7-305. Repealed. Sec. 7, Ch. 50, L. 1991.

History: En. 68-2615 by Sec. 15, Ch. 178, L. 1974; R.C.M. 1947, 68-2615(2).

19-7-306. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2616 by Sec. 16, Ch. 178, L. 1974; amd. Sec. 6, Ch. 59, L. 1977; R.C.M. 1947, 68-2616; amd. Sec. 3, Ch. 103, L. 1987.

19-7-307. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2619 by Sec. 19, Ch. 178, L. 1974; amd. Sec. 19, Ch. 332, L. 1977; R.C.M. 1947, 68-2619(part).

19-7-308 through 19-7-311. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

19-7-308. Renumbered 19-7-801.
19-7-309. Renumbered 19-7-802.
19-7-310. Renumbered 19-7-803.
19-7-311. Renumbered 19-7-804.

19-7-312. Transfer of membership — qualification of previous service. A person who elects to become a member of the sheriffs' retirement system pursuant to 19-7-301 may transfer the member's creditable service in the public employees' retirement system into the sheriffs' retirement system under the provisions of 19-7-802.

History: En. Sec. 1, Ch. 261, L. 1993.

Part 4
Contributions and Refunds

Part Cross-References

Management and investment of pension trust funds, Title 19, ch. 2, part 5.
PERS — contributions, Title 19, ch. 3, part 3.
Judges' retirement — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-7-401. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2605 by Sec. 5, Ch. 178, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2605(part).

19-7-402. Sources of money in fund. The following money must be paid to the board, which shall credit the payments to the pension trust fund:

(1) all contributions by the various counties as required by this chapter;

(2) all contributions by members as required by this chapter;

(3) all interest on and increase of the investments and money under this chapter; and

(4) any supplemental appropriation or revenue from a source or sources approved by the legislature or money received directly from the federal government for funding of law enforcement retirement systems.

History: En. 68-2606 by Sec. 6, Ch. 178, L. 1974; R.C.M. 1947, 68-2606; amd. Sec. 137, Ch. 265, L. 1993; amd. Sec. 57, Ch. 562, L. 1999.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.
Authority to invest funds in obligations of housing authority, 7-15-4505.
Separate investment funds, 17-6-203.
Permissible investments, 17-6-211.
Judges' retirement — payments into pension trust fund, 19-5-401.
Highway patrol retirement — payments into pension trust fund, 19-6-401.
Game wardens' and peace officers' retirement — contributions to pension trust fund, 19-8-501.
Police retirement — statewide plan — other money credited as employer contributions, 19-9-705.
Firefighters' unified retirement — other money credited as employer contributions, 19-13-607.

19-7-403. Member's contributions deducted. (1) Each member shall contribute into the pension trust fund 9.245% of the member's monthly compensation, which must be deposited to the member's credit in the pension trust fund.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and salary as used to define the member's highest average compensation in 19-7-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. 68-2608 by Sec. 8, Ch. 178, L. 1974; R.C.M. 1947, 68-2608(part); amd. Sec. 12, Ch. 464, L. 1985; amd. Sec. 138, Ch. 265, L. 1993; amd. Sec. 1, Ch. 162, L. 1995; amd. Sec. 2, Ch. 248, L. 1997; amd. Sec. 72, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (4) near end of first sentence substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

Cross-References

Refund of contributions on termination of service, 19-2-602.
Reinstatement after withdrawal of contributions, 19-2-603.
Purchase of service credits allowed, 19-2-704.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Employer to furnish itemized statement of deductions, 39-3-101.

19-7-404. Employer contributions. (1) The employer shall pay monthly 9.535% of each member's gross compensation into the pension trust fund created by this chapter.

(2) If the required contribution to the retirement system exceeds the funds available to a county from general revenue sources, a county may, subject to 15-10-420, budget, levy, and collect annually a tax on the taxable value of all taxable property within the county that is sufficient to raise the amount of revenue needed to meet the county's obligation.

History: En. 68-2609 by Sec. 9, Ch. 178, L. 1974; R.C.M. 1947, 68-2609(part); amd. Sec. 15, Ch. 549, L. 1981; amd. Sec. 2, Ch. 393, L. 1985; amd. Sec. 5, Ch. 261, L. 1993; amd. Sec. 139, Ch. 265, L. 1993; amd. Sec. 2, Ch. 162, L. 1995; amd. Sec. 3, Ch. 248, L. 1997; amd. Sec. 109, Ch. 574, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 574 in (2) near middle after "may" inserted "subject to 15-10-420" and substituted "tax on the taxable value of all taxable property" for "special tax on the assessable property" and deleted former second sentence that read: "This tax may be in addition to the annual rate of taxation allowed by law to be levied by the county." Amendment effective July 1, 2001.

Cross-References

Payment of contributions by employers — accompanying reports — penalty, 19-2-506.

19-7-405 through 19-7-409. Repealed. Sec. 236, Ch. 265, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

19-7-405. En. 68-2605 by Sec. 5, Ch. 178, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2605(part); amd. Sec. 63, Ch. 370, L. 1987; amd. Sec. 3, Ch. 221, L. 1991.

19-7-406. En. 68-2604 by Sec. 4, Ch. 178, L. 1974; amd. Sec. 2, Ch. 59, L. 1977; amd. Sec. 18, Ch. 332, L. 1977; R.C.M. 1947, 68-2604(2).

19-7-407. En. 68-2627 by Sec. 27, Ch. 178, L. 1974; amd. Sec. 11, Ch. 59, L. 1977; R.C.M. 1947, 68-2627.

19-7-408. En. 68-2604 by Sec. 4, Ch. 178, L. 1974; amd. Sec. 2, Ch. 59, L. 1977; amd. Sec. 18, Ch. 332, L. 1977; R.C.M. 1947, 68-2604(3).

19-7-409. En. Sec. 3, Ch. 138, L. 1991.

Part 5

Service Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — service retirement, Title 19, ch. 3, part 9.

Judges' retirement — service retirement, Title 19, ch. 5, part 5.
Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.
Game wardens' and peace officers' retirement — service retirement, Title 19, ch. 8, part 6.
Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.
Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.
Teachers' retirement — superannuation retirement, Title 19, ch. 20, part 8.

19-7-501. Eligibility for service retirement. A member who has completed at least 20 years of membership service has attained normal retirement age and may retire on a service retirement benefit.

History: En. 68-2610 by Sec. 10, Ch. 178, L. 1974; amd. Sec. 4, Ch. 59, L. 1977; R.C.M. 1947, 68-2610; amd. Sec. 3, Ch. 53, L. 1983; amd. Sec. 2, Ch. 86, L. 1985; amd. Sec. 1, Ch. 122, L. 1989; amd. Sec. 10, Ch. 196, L. 1989; amd. Sec. 144, Ch. 265, L. 1993; amd. Sec. 3, Ch. 162, L. 1995; amd. Sec. 25, Ch. 370, L. 1997; amd. Sec. 73, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 near middle after "membership service" inserted "has attained normal retirement age and". Amendment effective March 21, 2001.

19-7-502. Early retirement option. A member with at least 5 years of membership service and who has not met the minimum eligibility requirements for service retirement may retire with an early retirement benefit commencing no sooner than the first day of the month following the member's 50th birthday. The early retirement benefit must be calculated to be the actuarial equivalent of the member's retirement benefit as otherwise accrued, based upon payment commencing when the member would have completed 20 years of membership service or reached age 60, whichever event would have occurred first.

History: En. 68-2611 by Sec. 11, Ch. 178, L. 1974; R.C.M. 1947, 68-2611; amd. Sec. 9, Ch. 114, L. 1979; amd. Sec. 1, Ch. 105, L. 1981; amd. Sec. 2, Ch. 122, L. 1989; amd. Sec. 145, Ch. 265, L. 1993; amd. Sec. 4, Ch. 162, L. 1995; amd. Sec. 4, Ch. 248, L. 1997.

19-7-503. Service retirement benefit. (1) The amount of any service retirement benefit granted to a member is 2.5% of the member's highest average compensation for each year of service credit.

(2) If a retired member dies without designating a contingent annuitant under 19-7-1001, the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

History: En. 68-2608, 68-2612 by Secs. 8, 12, Ch. 178, L. 1974; R.C.M. 1947, 68-2608(part), 68-2612; amd. Sec. 10, Ch. 114, L. 1979; amd. Sec. 3, Ch. 401, L. 1985; amd. Sec. 1, Ch. 78, L. 1991; amd. Sec. 146, Ch. 265, L. 1993; amd. Sec. 5, Ch. 162, L. 1995; amd. Sec. 5, Ch. 248, L. 1997; amd. Sec. 58, Ch. 562, L. 1999; amd. Sec. 74, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 near middle of (1) after "member's" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

19-7-504. Repealed. Sec. 8, Ch. 248, L. 1997.

History: En. 68-2614 by Sec. 14, Ch. 178, L. 1974; amd. Sec. 5, Ch. 59, L. 1977; R.C.M. 1947, 68-2614; amd. Sec. 2, Ch. 105, L. 1981; amd. Sec. 1, Ch. 116, L. 1991; amd. Sec. 147, Ch. 265, L. 1993; amd. Sec. 6, Ch. 162, L. 1995.

Part 6

Disability Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — disability retirement, Title 19, ch. 3, part 10.
Judges' retirement — disability retirement benefits, Title 19, ch. 5, part 6.
Highway patrol retirement — disability retirement benefits, Title 19, ch. 6, part 6.
Game wardens' and peace officers' retirement — disability retirement benefits, Title 19, ch. 8, part 7.
Police retirement — statewide plan — disability retirement benefits, Title 19, ch. 9, part 9.
Firefighters' unified retirement — disability retirement benefits, Title 19, ch. 13, part 8.
Teachers' retirement — disability retirement, Title 19, ch. 20, part 9.

19-7-601. Disability retirement benefit. In the case of the disability of a member, regardless of the member's length of service, a disability retirement benefit must be awarded to the member based on the actuarial equivalent of the member's service retirement benefit under 19-7-503 standing to the member's credit at the time of the member's disability retirement. If the disability is a direct result of the member's service as a member in the line of duty, then the member must be awarded a benefit of one-half of the member's highest average compensation.

History: En. 68-2613 by Sec. 13, Ch. 178, L. 1974; R.C.M. 1947, 68-2613; amd. Sec. 148, Ch. 265, L. 1993; amd. Sec. 75, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at end of second sentence substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

Cross-References

Disability defined, 19-2-303.

Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.

19-7-602. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2621 by Sec. 21, Ch. 178, L. 1974; amd. Sec. 8, Ch. 59, L. 1977; R.C.M. 1947, 68-2621; amd. Sec. 11, Ch. 196, L. 1989.

19-7-603. Repealed. Sec. 4, Ch. 401, L. 1985.

History: En. 68-2617 by Sec. 17, Ch. 178, L. 1974; R.C.M. 1947, 68-2617.

19-7-604. Renumbered 19-7-901 by Code Commissioner, 1993.

19-7-605 through 19-7-610 reserved.

19-7-611. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 5, Ch. 597, L. 1981.

19-7-612. Medical examination of disability retiree — cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (2) or when, if a position is available, the recipient cannot be reinstated under subsection (2) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) (a) Except as provided in subsection (2)(b), a person other than an elected official whose disability retirement benefit is canceled because the person is no longer incapacitated must be reinstated to the position held by the person immediately before the person's retirement or to a position in a comparable pay and benefit category within the person's capacity, whichever is first open. The fact that the person was retired for disability may not prejudice any right to reinstatement to duty that the person may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(3) The public body required to reinstate a person under subsection (2) may request a medical or psychological review as to the ability of the member to return to work as a member of the sheriff's department. If the board's findings are upheld, the public body shall pay the cost of the review.

History: En. Sec. 6, Ch. 597, L. 1981; amd. Sec. 149, Ch. 265, L. 1993; amd. Sec. 18, Ch. 412, L. 1995; amd. Sec. 26, Ch. 370, L. 1997.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement,19-3-1015.

Judges' retirement — medical examination of disability retiree — cancellation of benefit, 19-5-612.

Highway patrol retirement — medical examination of disability retiree — cancellation of benefit, 19-6-612.

Game wardens' and peace officers' retirement — medical examination of disability retiree — cancellation of benefit, 19-8-712.

Police retirement — statewide plan — disability — reinstatement upon termination of benefit, 19-9-905.

Firefighters' unified retirement — medical examination of disability retiree — cancellation of benefit, 19-13-804.

Teachers' retirement — medical examination of disability retiree, 19-20-903.
Teachers' retirement — cancellation of allowance and restoration of membership, 19-20-905.

Part 7
Postretirement Benefits and Benefit Increases

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — minimum benefits and benefit increases, Title 19, ch. 3, part 16.
Highway patrol retirement — minimum benefits and benefit increases, Title 19, ch. 6, part 7.
Police retirement — statewide plan — minimum benefits and benefit increases, Title 19, ch. 9, part 10.
Firefighters' unified retirement — minimum benefits and benefit increases, Title 19, ch. 13, part 10.

19-7-701. Renumbered 19-7-1001 by Code Commissioner, 1993.

19-7-702 through 19-7-707. Repealed. Sec. 236, Ch. 265, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

19-7-702. En. 68-2619 by Sec. 19, Ch. 178, L. 1974; amd. Sec. 19, Ch. 332, L. 1977; R.C.M. 1947, 68-2619(part).
19-7-703. En. 68-2624 by Sec. 24, Ch. 178, L. 1974; R.C.M. 1947, 68-2624.
19-7-704. En. 68-2623 by Sec. 23, Ch. 178, L. 1974; R.C.M. 1947, 68-2623(2).
19-7-705. En. 68-2620 by Sec. 20, Ch. 178, L. 1974; amd. Sec. 8, Ch. 214, L. 1977; R.C.M. 1947, 68-2620; amd. Sec. 13, Ch. 464, L. 1985; amd. Sec. 4, Ch. 50, L. 1991; amd. Sec. 10, Ch. 823, L. 1991.
19-7-706. En. 68-2620.1 by Sec. 9, Ch. 214, L. 1977; R.C.M. 1947, 68-2620.1.
19-7-707. En. Sec. 1, Ch. 14, L. 1987.

19-7-708. Repealed. Sec. 38, Ch. 287, L. 1997.

History: En. Sec. 1, Ch. 115, L. 1989; amd. Sec. 153, Ch. 265, L. 1993.

19-7-709. Repealed. Sec. 38, Ch. 287, L. 1997.

History: En. Sec. 2, Ch. 115, L. 1989; amd. Sec. 154, Ch. 265, L. 1993.

19-7-710. Repealed. Sec. 38, Ch. 287, L. 1997.

History: En. Sec. 3, Ch. 115, L. 1989; amd. Sec. 155, Ch. 265, L. 1993.

19-7-711. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 3% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made.

(4) The board shall adopt rules to administer the provisions of this section.

History: En. Sec. 1, Ch. 287, L. 1997; amd. Sec. 59, Ch. 562, L. 1999; amd. Sec. 4, Ch. 62, L. 2001; amd. Sec. 11, Ch. 149, L. 2001; amd. Sec. 4, Ch. 309, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 8
Service Credit

Part Cross-References

The Public Employees' Retirement Act — general provisions — service credit and additional contributions, Title 19, ch. 2, part 7.

Management of benefit payments, Title 19, ch. 2, part 9.

19-7-801. Membership in municipal police officers' retirement system prior to or following city-county consolidation — payment of benefits by two systems. (1) A law enforcement officer who has not changed employment but who has, because of a city-county consolidation, been transferred either from a city police force to a county sheriff's department or from a county sheriff's department to a city police force as a law enforcement officer is eligible for a service retirement benefit if the officer's combined service in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum membership service requirement of the system to which the officer last made contributions. A member who has elected to continue membership in the public employees' retirement system under 19-7-301 may continue the election. However, credit for service in the public employees' retirement system that has not been transferred prior to January 1, 1979, may not be transferred.

(2) A member of the municipal police officers' retirement system who begins employment in a position covered by the sheriffs' retirement system following a city-county consolidation may remain in the municipal police officers' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 30 days after beginning the employment.

(3) Eligibility for and calculation of disability retirement, death benefits, and refund of contributions are governed by the provisions of the retirement system to which the officer last made contributions.

(4) The service retirement benefit of a member described in subsection (1) must be calculated separately for each system based on the service credited under each system. The calculation for the sheriffs' retirement system portion of the benefit must include the appropriate reduction in the retirement benefit for an optional retirement benefit elected under 19-7-1001. The final salary or highest average compensation for each calculation must be based on the highest compensation earned while a member of either system. Each system shall pay its proportionate share, based on the number of years of service credited, of the combined benefit.

(5) Upon the death of a retired member receiving a service retirement benefit under this section, the survivor or contingent annuitant and the continuing benefit must be determined separately for each system as follows:

(a) For the municipal police officers' retirement system portion of the benefit, the surviving spouse must receive a benefit equal to the municipal police officers' retirement system portion of the service retirement benefit as calculated at the time of the member's retirement. If the retired member leaves no surviving spouse or upon the death of the surviving spouse, the retired member's surviving dependent child, or children collectively if there are more than one, must receive the same monthly benefits that a surviving spouse would receive for as long as the child or one of the children remains dependent, as defined in 19-9-104. The benefits must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata benefits to that child must cease and be paid to the remaining children until all the children are no longer dependent.

(b) For the sheriffs' retirement system portion of the benefit:

(i) the contingent annuitant must receive a continuing benefit as determined under 19-7-1001, if the retired member elected an optional retirement benefit; or

(ii) if the retired member did not elect an optional retirement benefit, any payment owed the retired member, including the excess, if any, of the retired member's accumulated contributions standing to the retired member's credit at the time of retirement less payments made to the retired member must be paid to the retired member's designated beneficiary.

History: En. Sec. 1, Ch. 122, L. 1979; amd. Sec. 2, Ch. 401, L. 1985; amd. Sec. 140, Ch. 265, L. 1993; Sec. 19-7-308, MCA 1991; redes. 19-7-801 by Code Commissioner, 1993; amd. Sec. 28, Ch. 370, L. 1997; amd. Sec. 76, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 inserted (2) allowing a member of the municipal police officers' retirement system who begins employment in a position covered by the sheriffs' retirement system following a city-county consolidation to remain in the municipal police officers' retirement system or elect to become a member of the sheriffs' retirement system; in (4) near beginning of third sentence after "final salary or" substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Police retirement — statewide plan — transfer of assets and liabilities from prior plans, 19-9-205.

19-7-802. Purchase of other Montana public service. (1) (a) A member may, at any time before retirement, file a written application with the board to purchase all or any portion of the member's service in the public employees', highway patrol officers', firefighters' unified, game wardens' and peace officers', or municipal police officers' retirement system to the extent that the member either has received or is eligible to receive a refund of the member's membership contributions. To purchase this service, the member shall pay the actuarial cost of the service in the sheriffs' retirement system, as determined by the board, based on the system's most recent actuarial valuation minus the employer contribution provided in subsection (1)(b).

(b) Upon receiving the member's payment under subsection (1)(a), the board shall transfer from the member's former retirement system to the sheriffs' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the sheriffs' retirement system, according to the most recent actuarial valuation, based on the compensation earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, file a written application with the board to purchase all or a portion of full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and employment documentation certified by the member's public employer. To purchase service under this section, the employee shall pay the actuarial cost of the service in the sheriffs' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

History: En. Sec. 3, Ch. 145, L. 1981; amd. Sec. 3, Ch. 331, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 141, Ch. 265, L. 1993; Sec. 19-7-309, MCA 1991; redes. 19-7-802 by Code Commissioner, 1993; amd. Sec. 19, Ch. 412, L. 1995; amd. Sec. 54, Ch. 51, L. 1999; amd. Sec. 60, Ch. 562, L. 1999; amd. Sec. 77, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1)(a) near beginning of first sentence after "before retirement" substituted "file a written application with the board to purchase" for "make a written election with the board to qualify" and at beginning of second sentence substituted "To purchase this service, the member shall pay the actuarial cost of the service" for "To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service"; in (2)(a) near beginning of first sentence after "before retirement" substituted "file a written application with the board to purchase all or a portion of" for "make a written election with the board to qualify any" and at beginning of third sentence substituted "To purchase service under this section, the employee shall pay the actuarial cost of the service" for "The board shall grant service credit upon contribution by the employee of the actuarial cost of granting this service"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

PERS — qualification of other Montana public service, 19-3-509.
Highway patrol retirement — qualification of other Montana public service, 19-6-802.
Game wardens' and peace officers' retirement — qualification of other Montana public service, 19-8-902.
Police retirement — statewide plan — qualification of other Montana public service, 19-9-405.
Firefighters' unified retirement — qualification of other Montana public service, 19-13-404.

19-7-803. Application to purchase military service. (1) Except as otherwise provided in this section and subject to 19-7-805, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits.

(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

(3) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

(4) Military service purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit.

History: En. Sec. 1, Ch. 31, L. 1987; amd. Sec. 2, Ch. 214, L. 1991; amd. Sec. 142, Ch. 265, L. 1993; Sec. 19-7-310, MCA 1991; redes. 19-7-803 by Code Commissioner, 1993; amd. Sec. 32, Ch. 58, L. 1999; amd. Sec. 78, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) at beginning inserted exception clause, after "member with" substituted "at least 15 years of service credit" for "15 years or more of service credit", near middle after "prior to retirement" substituted "file a written application with the board to purchase up to 5 years" for "make a written election with the board to qualify all or any portion", and at end deleted "up to a maximum of 5 years, except as provided in subsection (3), if the member is not otherwise eligible to receive credit"; in (2) at beginning substituted "To purchase this military service, the member shall pay the actuarial cost of the member's military service" for "To qualify military service, the member shall contribute to the account the actuarial cost of granting the service, to be determined by the board" and deleted former second and third sentences that read: "The member may not qualify more of the member's military service than the member has service credits in the sheriffs' retirement system in excess of 15 years. Military service purchased under this section is not membership service and may not be used in determining eligibility for a service retirement benefit"; in (3) substituted language regarding a member's ineligibility to purchase military service for former language that read: "If a member has retired from active duty in the armed forces of the United States with military retirement benefits, the member may not qualify the member's military service under subsection (1)"; deleted former (3) that read: "(3) The combined total purchase of additional years of service under the provisions of 19-7-804 and this section may not exceed 5 years"; inserted (4) providing that purchased military service is not considered membership service; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Veteran defined, 10-2-101.

Reemployment of public employee upon completion of military service, 10-2-221.

PERS — election to qualify military service, 19-3-503.

Highway patrol retirement — election to qualify military service, 19-6-801.

Game wardens' and peace officers' retirement — election to qualify military service, 19-8-901.

Police retirement — statewide plan — election to qualify previous military service, 19-9-403.

Firefighters' unified retirement — election to qualify previous military service, 19-13-403.

Police retirement — local funds — election to quality previous military service, 19-19-406.

Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-20-404.

19-7-804. Application to purchase additional service. (1) Subject to 19-7-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 additional year of service credit for each 5 years of membership service.

(2) To purchase service under this section, a member shall pay the actuarial cost of the service in the sheriffs' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(3) Service purchased under this section may not be used to qualify a member for the purchase of military service under 19-7-803.

(4) Service purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits.

History: En. Sec. 1, Ch. 214, L. 1991; amd. Sec. 143, Ch. 265, L. 1993; Sec. 19-7-311, MCA 1991; redes. 19-7-804 by Code Commissioner, 1993; amd. Sec. 33, Ch. 58, L. 1999; amd. Sec. 61, Ch. 562, L. 1999; amd. Sec. 79, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning of (1) substituted "Subject to 19-7-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application" for "Except as provided in subsection (5), at any time before retirement, a member may make a written election"; deleted former (2) that read: "(2) Service purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits"; at beginning of (2) substituted "To purchase service under this section, a member shall pay the actuarial cost of the service" for "To qualify this service, a member shall:

(a) make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service"; at beginning of (3) substituted "Service purchased" for "Service qualified"; inserted (4) regarding crediting of purchased service; deleted former (5) that read: "(5) The combined total of additional years of service purchased under the provisions of 19-7-803 and this section may not exceed 5 years"; and made minor changes in style. Amendment effective March 21, 2001.

19-7-805. Service purchase limitation. A member may not purchase a combined total of more than 5 years of service under 19-7-803 and 19-7-804.

History: En. Sec. 80, Ch. 99, L. 2001.

Compiler's Comments

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

19-7-806 through 19-7-809 reserved.

19-7-810. Absence because of illness or injury. (1) Time, not to exceed 5 years, during which a member is absent from service because of injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined by the board to have arisen out of and in the course of the member's employment. However, the member may not purchase service credit for this period unless the member complies with subsections (2) through (4), in which case the absence is considered as time spent in service for both service credit and membership service.

(2) After returning to service and while still in service, a member desiring service credit for the period of time referred to in subsection (1) shall file with the board a written application to pay the contributions under subsection (3).

(3) (a) A member eligible to purchase service credit pursuant to subsection (1) shall contribute to the retirement system an amount equal to the contributions that would have been made by the member to the system during the member's period of absence on the basis of the member's compensation immediately prior to the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to service to the date the member contributes for the period of absence.

(b) If a member elects to contribute under subsection (3)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (3)(a) and shall pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (3)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(4) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions have been refunded pursuant to 19-2-602. The member loses the right to contribute for the period of time during which retirement benefits have been received if the member retires during the absence.

History: En. Sec. 55, Ch. 562, L. 1999; amd. Sec. 81, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) in second sentence after "member may not" substituted "purchase service credit" for "earn service credits" and near end after "for both" substituted "service credit" for "service credits"; and in (3)(a) near beginning after "eligible to" substituted "purchase service credit" for "earn service credits". Amendment effective March 21, 2001.

Part 9
Survivorship Benefits and Death Payments

Part Cross-References

Beneficiaries, Title 19, ch. 2, part 8.

Designation of beneficiary, 19-2-801.

Limitations on payment to person causing member's death or disability, 19-2-804.

Management of benefit payments, Title 19, ch. 2, part 9.

Exemption from taxes and legal process — exceptions, 19-2-1004.

19-7-901. Payments in case of death before retirement. If a member dies before retirement, the member's designated beneficiary may elect one of the following options for which the member qualified and for which the designated beneficiary qualifies:

(1) a lump-sum payment of the accumulated contributions standing to the member's credit at the member's death;

(2) a survivorship benefit equal to 2.5% of the member's highest average compensation for each year of service credit actuarially reduced from age 65 or the date on which the member would have completed 20 years of membership service, whichever provides a larger retirement benefit; or

(3) a survivorship benefit that is no less than one-half of the member's highest average compensation if the board finds that the member died as a direct and proximate result of injuries received in the course of employment.

History: En. 68-2618 by Sec. 18, Ch. 178, L. 1974; amd. Sec. 7, Ch. 59, L. 1977; amd. Sec. 1, Ch. 93, L. 1977; R.C.M. 1947, 68-2618; amd. Sec. 3, Ch. 105, L. 1981; amd. Sec. 2, Ch. 81, L. 1987; amd. Sec. 150, Ch. 265, L. 1993; Sec. 19-7-604, MCA 1991; redes. 19-7-901 by Code Commissioner, 1993; amd. Sec. 7, Ch. 162, L. 1995; amd. Sec. 6, Ch. 248, L. 1997; amd. Sec. 82, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 near beginning of (2) and (3) after "member's" substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

Part 10
Optional Forms of Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.

Exemption from taxes and legal process — exceptions, 19-2-1004.

19-7-1001. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit to a contingent annuitant, as follows:

(a) option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary was not granted the right to receive the optional retirement benefit as part of the dissolution settlement or a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the dissolution settlement or family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the value of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change.

History: En. 68-2626 by Sec. 26, Ch. 178, L. 1974; amd. Sec. 10, Ch. 59, L. 1977; R.C.M. 1947, 68-2626; amd. Sec. 2, Ch. 126, L. 1987; amd. Sec. 151, Ch. 265, L. 1993; Sec. 19-7-701, MCA 1991; redes. 19-7-1001 by Code Commissioner, 1993; amd. Sec. 3, Ch. 217, L. 1999; amd. Sec. 62, Ch. 562, L. 1999; amd. Sec. 83, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) near end of second sentence after "contingent annuitant" deleted "that the member or designated beneficiary nominated by written application, executed and filed with the board with the application for benefits"; in (1)(c) after "equivalent amounts" inserted "payable to a contingent annuitant"; in (2) at beginning of first sentence substituted "The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board" for "Election of an optional retirement benefit must be by written application filed" and inserted second sentence requiring identification of a contingent annuitant; in (4) near middle after "member's" substituted "written application electing or changing an election" for "election or changed election" and at end after "void" deleted "and the death is considered as that of a member before retirement"; in (5)(a) near beginning after "that is" substituted "initially effective on or after October 1, 1999" for "effective after October 1, 1999"; in (7)(a) at beginning substituted "Upon filing a written application with the board" for "Upon written application to the board"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

PERS — optional forms of benefits, 19-3-1501.
Judges' retirement — optional forms of benefits, 19-5-701.
Game wardens' and peace officers' retirement — optional forms of benefits, 19-8-801.
Teachers' retirement — optional allowances, 19-20-702.

Part 11
Reemployment of Retired Members

19-7-1101. Reemployment of retired member. (1) A retired member who returns to service for 60 or more working days in a calendar year shall become an active member of the system. Upon reinstatement as an active member, benefit payments must cease until subsequent retirement.

(2) A retired member who returns to service for less than 60 working days in a calendar year may not become an active member. The retirement benefit of a retired member employed in service must be reduced by $1 for each $3 earned in excess of $5,000 in a calendar year.

History: En. Sec. 152, Ch. 265, L. 1993; amd. Sec. 84, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 near beginning of (1) after "service for" substituted "60 or more working days" for "at least 60 working days"; in first sentence of (2) after "calendar year" substituted "may not become an active member" for "is excluded from membership"; and made minor changes in style. Amendment effective March 21, 2001.

CHAPTER 8

GAME WARDENS' AND PEACE OFFICERS' RETIREMENT

Part 1 — General Provisions

19-8-101. Definitions.
19-8-102. Game wardens' and peace officers' retirement system established.
19-8-103. Repealed.
19-8-104. Repealed.
19-8-105. Short title.

Part 2 — Administration (Repealed and Terminated)

19-8-201. Repealed.
19-8-202. Repealed.
19-8-203. Repealed.
19-8-204. Terminated.

Part 3 — Eligibility, Membership, and Vesting

19-8-301. Membership — inactive vested members — inactive nonvested members.
19-8-302. Public employees' retirement system — transfer of membership.
19-8-303. Repealed.
19-8-304. Renumbered 19-8-901 by Code Commissioner, 1993.
19-8-305. Repealed.
19-8-306. Renumbered 19-8-902 by Code Commissioner, 1993.
19-8-307. Renumbered 19-8-903 by Code Commissioner, 1993.
19-8-308. Transfer of service.

Part 4 — Creation and Management of Retirement Account (Repealed. Sec. 236, Ch. 265, L. 1993)

Part 5 — Contributions and Refunds

19-8-501. Contributions to pension trust fund.
19-8-502. Member's contribution.
19-8-503. Repealed.
19-8-504. State employer's contribution.
19-8-505. Repealed.

Part 6 — Service Retirement Benefits

19-8-601. Time of retirement.
19-8-602. Repealed.
19-8-603. Service retirement benefit.
19-8-604. Early retirement benefit.

Part 7 — Disability Retirement Benefits

19-8-701. Disability retirement benefit.
19-8-702. Repealed.
19-8-703. Renumbered 19-8-1001 by Code Commissioner, 1993.
19-8-704. Renumbered 19-8-1002 by Code Commissioner, 1993.
19-8-705 through 19-8-710 reserved.
19-8-711. Repealed.
19-8-712. Medical examination of disability retiree — cancellation of benefit.

Part 8 — Optional Forms of Benefit Payments

19-8-801. Optional forms of benefits — designation of contingent annuitant.
19-8-802 through 19-8-807. Repealed.
19-8-808. Renumbered 19-8-1101 by Code Commissioner, 1993.
19-8-809. Renumbered 19-8-1102 by Code Commissioner, 1993.
19-8-810. Renumbered 19-8-1103 by Code Commissioner, 1993.
19-8-811 through 19-8-815 reserved.
19-8-816. Renumbered 19-8-1104 by Code Commissioner, 1993.

Part 9 — Service Credit

19-8-901. Application to purchase military service.
19-8-902. Purchase of other Montana public service.

19-8-903. Employment in United States government.
19-8-904. Application to purchase additional service.
19-8-905. Absence due to injury or illness.
19-8-906. Service purchase limitation.

Part 10 — Survivorship Benefits and Death Payments

19-8-1001. Benefits upon employment-related death.
19-8-1002. Postretirement death payments.
19-8-1003. Nonduty-related death of active member.

Part 11 — Postretirement Benefits and Benefit Increases

19-8-1101. Repealed.
19-8-1102. Repealed.
19-8-1103. Repealed.
19-8-1104. Minimum monthly benefit.
19-8-1105. Guaranteed annual benefit adjustment.
19-8-1106 through 19-8-1109 reserved.
19-8-1110. Ad hoc cost-of-living increase.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
The Public Employees' Retirement Act — general provisions, Title 19, ch. 2.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement system, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.
Fish and game wardens, Title 87, ch. 1, part 5.

Part 1
General Provisions

19-8-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code are made and exclusive of maintenance, allowances, and expenses.

(2) "Highest average compensation" means the highest average monthly compensation received by a member for any 3 years of continuous service upon which contributions were made or, in the event a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to an employee upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(3) "Game warden" means a state fish and game warden hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks money.

(4) "Motor carrier officer" means an employee of the department of transportation appointed as a peace officer pursuant to 61-12-201.

(5) "Peace officer" or "state peace officer" means a person who by virtue of the person's employment with the state is vested by law with a duty to maintain public order or make arrests for offenses while acting within the scope of the person's authority or who is charged with specific law enforcement responsibilities on behalf of the state.

History: (1) thru (11)En. Sec. 1, Ch. 130, L. 1963; amd. Sec. 16, Ch. 326, L. 1974; amd. Sec. 1, Ch. 8, L. 1977; amd. Secs. 1, 4, Ch. 132, L. 1977; amd. Sec. 1, Ch. 330, L. 1977; amd. Sec. 4, Ch. 332, L. 1977; Sec. 68-1401, R.C.M. 1947; (12)En. Sec. 2, Ch. 130, L. 1963; amd. Sec. 2, Ch. 8, L. 1977; amd. Sec. 2, Ch. 330, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 68-1402, R.C.M. 1947; R.C.M. 1947, 68-1401, 68-1402; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 592, L. 1981; amd. Sec. 11, Ch. 282, L. 1983; amd. Sec. 6, Ch. 45, L. 1987; amd. Sec. 12, Ch. 196, L. 1989; amd. Sec. 158, Ch. 265, L. 1993; amd. Sec. 12, Ch. 640, L. 1993; amd. Sec. 2, Ch. 223, L. 1997; amd. Sec. 34, Ch. 58, L. 1999; amd. Sec. 85, Ch. 99, L. 2001; amd. Sec. 12, Ch. 149, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 99 substituted highest average compensation for final average salary as defined term, near beginning of first sentence of definition after "means the" inserted "highest", and at end of second sentence substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

Chapter 149 in definition of final average salary in second sentence near beginning after "severance pay" inserted "including payment for compensatory leave". Amendment effective March 29, 2001.

19-8-102. Game wardens' and peace officers' retirement system established. There is a retirement plan known as the game wardens' and peace officers' retirement system, which is governed by the provisions of chapter 2 and this chapter.

History: En. 68-1402.1 by Sec. 3, Ch. 8, L. 1977; R.C.M. 1947, 68-1402.1; amd. Sec. 157, Ch. 265, L. 1993; amd. Sec. 3, Ch. 223, L. 1997; amd. Sec. 63, Ch. 562, L. 1999.

Cross-References

Public Employees' Retirement Board — administration, Title 19, ch. 2, part 4.

19-8-103. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 26, Ch. 130, L. 1963; R.C.M. 1947, 68-1426.

19-8-104. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 23, Ch. 130, L. 1963; R.C.M. 1947, 68-1423(part).

19-8-105. Short title. This chapter may be cited as "The Game Wardens' and Peace Officers' Retirement Act".

History: En. Sec. 156, Ch. 265, L. 1993; amd. Sec. 55, Ch. 51, L. 1999.

Part 2
Administration
(Repealed and Terminated)

19-8-201. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 6, Ch. 130, L. 1963; amd. Sec. 5, Ch. 8, L. 1977; amd. Sec. 6, Ch. 332, L. 1977; R.C.M. 1947, 68-1406(1).

19-8-202. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 6, Ch. 130, L. 1963; amd. Sec. 5, Ch. 8, L. 1977; amd. Sec. 6, Ch. 332, L. 1977; R.C.M. 1947, 68-1406(2).

19-8-203. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 10, Ch. 130, L. 1963; amd. Sec. 8, Ch. 8, L. 1977; amd. Sec. 5, Ch. 330, L. 1977; amd. Sec. 1, Ch. 578, L. 1977; R.C.M. 1947, 68-1410(2); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 4, Ch. 235, L. 1981; amd. Sec. 12, Ch. 282, L. 1983.

19-8-204. Terminated. Sec. 7, Ch. 328, L. 1987.

History: En. Sec. 3, Ch. 328, L. 1987.

Part 3
Eligibility, Membership, and Vesting

Part Cross-References

The Public Employees' Retirement Act — general provisions — termination of membership and refunds, Title 19, ch. 2, part 6.

PERS — membership, Title 19, ch. 3, part 4.

Judges' retirement — membership, Title 19, ch. 5, part 3.

Highway patrol retirement — membership, Title 19, ch. 6, part 3.

Sheriffs' retirement — membership, Title 19, ch. 7, part 3.

Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.

Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.

Teachers' retirement — membership, Title 19, ch. 20, part 3.

19-8-301. Membership — inactive vested members — inactive nonvested members. (1) Except as provided in 19-8-302, the following state peace officers must be covered under the game wardens' and peace officers' retirement system and, beginning on the first day of employment, shall become and remain active members for as long as they are employed as peace officers:

(a) game wardens who are assigned to law enforcement in the department of fish, wildlife, and parks;

(b) motor carrier officers employed by the department of transportation;

(c) campus security officers employed by the university system;

(d) wardens and deputy wardens employed by the department of corrections;

(e) corrections officers employed by the department of corrections;

(f) probation and parole officers employed by the department of corrections;

(g) stock inspectors and detectives employed by the department of livestock;

(h) motor vehicle inspectors employed by the department of justice; and

(i) drill instructors employed by the department of corrections.

(2) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(3) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

History: En. Sec. 7, Ch. 130, L. 1963; amd. Sec. 18, Ch. 326, L. 1974; amd. Sec. 6, Ch. 8, L. 1977; amd. Sec. 4, Ch. 330, L. 1977; R.C.M. 1947, 68-1407(part); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 159, Ch. 265, L. 1993; amd. Sec. 4, Ch. 223, L. 1997; amd. Sec. 2, Ch. 491, L. 1999.

Cross-References

Legislators — continued participation, 5-2-304.

19-8-302. Public employees' retirement system — transfer of membership. (1) Except as provided in subsections (2) and (4), an eligible peace officer shall become a member of the game wardens' and peace officers' retirement system on the first day of covered service.

(2) A member of the public employees' retirement system who first becomes eligible for membership in the game wardens' and peace officers' retirement system on July 1, 1997, may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election that must be received by the board no later than December 31, 2001.

(3) A person who is a member of the game wardens' and peace officers' retirement system assigned to law enforcement who transfers to a position involving duties other than law enforcement within the same state agency may retain membership in the retirement system by filing a written election with the board no later than 30 days after transfer to the new position.

(4) A person who is a member of the public employees' retirement system who transfers to a position covered by the game wardens' and peace officers' retirement system may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election with the board no later than 30 days after transfer to the new position.

History: En. Sec. 29, Ch. 130, L. 1963; amd. Sec. 16, Ch. 8, L. 1977; amd. Sec. 7, Ch. 330, L. 1977; R.C.M. 1947, 68-1429; amd. Sec. 160, Ch. 265, L. 1993; amd. Sec. 5, Ch. 223, L. 1997; amd. Sec. 86, Ch. 99, L. 2001; amd. Sec. 1, Ch. 442, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 99 near end of (2) after "system by" substituted "filing a written election with the board" for "submitting a written election of intent to the board" (amendment modified by Ch. 442 amendment); and in (3) and in (4) near end after "written election" deleted "of intent". Amendment effective March 21, 2001.

Chapter 442 in (2) near end after "intent" substituted "that must be received by" for "to" and at end substituted "December 31, 2001" for "December 31, 1997". Amendment effective October 1, 2001.

Cross-References

Public employees' retirement system, Title 19, ch. 3.

19-8-303. Repealed. Sec. 236, Ch. 265, L. 1993.

History: (1)En. Sec. 7, Ch. 130, L. 1963; amd. Sec. 18, Ch. 326, L. 1974; amd. Sec. 6, Ch. 8, L. 1977; amd. Sec. 4, Ch. 330, L. 1977; Sec. 68-1407, R.C.M. 1947; (2)En. Sec. 8, Ch. 130, L. 1963; amd. Sec. 19, Ch. 326, L. 1974; Sec. 68-1408, R.C.M. 1947; R.C.M. 1947, 68-1407(part), 68-1408(part).

19-8-304. Renumbered 19-8-901 by Code Commissioner, 1993.

19-8-305. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 19, Ch. 130, L. 1963; amd. Sec. 7, Ch. 332, L. 1977; R.C.M. 1947, 68-1419(part).

19-8-306. Renumbered 19-8-902 by Code Commissioner, 1993.

19-8-307. Renumbered 19-8-903 by Code Commissioner, 1993.

19-8-308. Transfer of service. A person who elects to become a member of the game wardens' and peace officers' retirement system pursuant to 19-8-302 may transfer the member's service in the public employees' retirement system into the game wardens' and peace officers' retirement system under the provisions of 19-8-902.

History: En. Sec. 1, Ch. 223, L. 1997; amd. Sec. 87, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 near middle after "member's" deleted "creditable". Amendment effective March 21, 2001.

Part 4
Creation and Management of Retirement Account (Repealed. Sec. 236, Ch. 265, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

19-8-401. En. Sec. 8, Ch. 130, L. 1963; amd. Sec. 19, Ch. 326, L. 1974; R.C.M. 1947, 68-1408(part); amd. Sec. 13, Ch. 282, L. 1983.

19-8-402. En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(2).

19-8-403. En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(3); amd. Sec. 4, Ch. 221, L. 1991.

19-8-404. En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(4).

19-8-405. En. Sec. 28, Ch. 130, L. 1963; R.C.M. 1947, 68-1428; amd. Sec. 14, Ch. 282, L. 1983.

19-8-406. En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(5).

Part 5
Contributions and Refunds

Part Cross-References

Management and investment of pension trust funds, Title 19, ch. 2, part 5.
PERS — contributions, Title 19, ch. 3, part 3.
Judges' retirement — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-8-501. Contributions to pension trust fund. The following must be paid to the board and must be credited to the pension trust fund:

(1) all contributions by the state from department of fish, wildlife, and parks money;
(2) all contributions by the state game wardens; and
(3) all interest on and increase of the investments and money in the pension trust fund.

History: En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(1); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 161, Ch. 265, L. 1993; amd. Sec. 64, Ch. 562, L. 1999.

Cross-References

Judges' retirement — payments into pension trust fund, 19-5-401.
Highway patrol retirement — payments into pension trust fund, 19-6-401.
Sheriffs' retirement — sources of money in fund, 19-7-402.
Police retirement — statewide plan — other money credited as employer contributions, 19-9-705.
Firefighters' unified retirement — other money credited as employer contributions, 19-13-607.

19-8-502. Member's contribution. (1) Each member is required to contribute into the pension trust fund 10.56% of the member's monthly compensation, which must be deposited to the member's credit in the pension trust fund.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and the member's compensation as used to define the member's highest average compensation in 19-8-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. Sec. 9, Ch. 130, L. 1963; amd. Sec. 7, Ch. 8, L. 1977; R.C.M. 1947, 68-1409(part); amd. Sec. 3, Ch. 249, L. 1985; amd. Sec. 14, Ch. 464, L. 1985; amd. Sec. 162, Ch. 265, L. 1993; amd. Sec. 23, Ch. 287, L. 1997; amd. Sec. 2, Ch. 98, L. 2001; amd. Sec. 88, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section — Coordination: Section 2(2), Chapter 98, L. 2001, a coordination section, provided that if either House Bill No. 294 or Senate Bill No. 284 and Senate Bill No. 89 and [this act] are passed and approved, then 19-8-502 is amended as follows: near middle of (1) substituted "10.56% of the member's monthly compensation" for "8.5% of the member's monthly compensation". House Bill No. 294 was passed and approved as Ch. 149, L. 2001, and Senate Bill No. 89 was passed and approved as Ch. 309, L. 2001. Amendment effective October 1, 2001.

Chapter 99 in (4) near end of first sentence after "member's" substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Refund of contributions on termination of service, 19-2-602.
Reinstatement after withdrawal of contributions, 19-2-603.
Purchase of service credits allowed, 19-2-704.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Employer to furnish itemized statement of deductions, 39-3-101.

19-8-503. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 16, Ch. 130, L. 1963; R.C.M. 1947, 68-1416; amd. Sec. 2, Ch. 592, L. 1981; amd. Sec. 5, Ch. 50, L. 1991.

19-8-504. State employer's contribution. Each month, state employers shall pay to the pension trust fund a sum equal to 9% of the total compensation paid to their covered employees. The department of fish, wildlife, and parks shall include in its budget and shall request for legislative appropriation an amount necessary to defray the state's portion of the costs of this section.

History: En. Sec. 10, Ch. 130, L. 1963; amd. Sec. 8, Ch. 8, L. 1977; amd. Sec. 5, Ch. 330, L. 1977; amd. Sec. 1, Ch. 578, L. 1977; R.C.M. 1947, 68-1410(1); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 640, L. 1979; amd. Sec. 18, Ch. 549, L. 1981; amd. Sec. 19, Ch. 703, L. 1985; amd. Sec. 12, Ch. 557, L. 1987; amd. Sec. 1, Ch. 609, L. 1991; amd. Sec. 163, Ch. 265, L. 1993; amd. Sec. 3, Ch. 450, L. 1993; amd. Sec. 25, Ch. 509, L. 1995; amd. Sec. 6, Ch. 223, L. 1997; amd. Sec. 24, Ch. 287, L. 1997; amd. Sec. 22, Ch. 532, L. 1997.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.
Payment of contributions by employers — accompanying reports — penalty, 19-2-506.
Department of Fish, Wildlife, and Parks — payment of salaries, per diem, and expenses, 87-1-602.

19-8-505. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 3, Ch. 138, L. 1991.

Part 6
Service Retirement Benefits

Part Cross-References
Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — service retirement, Title 19, ch. 3, part 9.
Judges' retirement — service retirement, Title 19, ch. 5, part 5.
Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.
Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.
Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.
Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.
Teachers' retirement — superannuation retirement, Title 19, ch. 20, part 8.

19-8-601. Time of retirement. A member who has completed at least 20 years of membership service and reached the age of 50 years has attained normal retirement age and may retire with a service retirement benefit by filing a written application with the board.
History: En. Sec. 11, Ch. 130, L. 1963; R.C.M. 1947, 68-1411; amd. Sec. 3, Ch. 592, L. 1981; amd. Sec. 4, Ch. 53, L. 1983; amd. Sec. 3, Ch. 86, L. 1985; amd. Sec. 1, Ch. 249, L. 1985; amd. Sec. 13, Ch. 196, L. 1989; amd. Sec. 167, Ch. 265, L. 1993; amd. Sec. 29, Ch. 370, L. 1997; amd. Sec. 89, Ch. 99, L. 2001.

Compiler's Comments
2001 Amendment: Chapter 99 at beginning after "A member" deleted "in service", near middle after "50 years" substituted "has attained normal retirement age and" for "and terminated service", and at end after "retirement benefit" substituted "by filing a written application with the board" for "upon written application to the board"; and made minor changes in style. Amendment effective March 21, 2001.

19-8-602. Repealed. Sec. 8, Ch. 53, L. 1983.
History: En. Sec. 12, Ch. 130, L. 1963; R.C.M. 1947, 68-1412.

19-8-603. Service retirement benefit. The service retirement benefit is equal to 2.5% of the member's highest average compensation for each year of service credit.
History: (1)En. Sec. 13, Ch. 130, L. 1963; amd. Sec. 1, Ch. 111, L. 1967; amd. Sec. 9, Ch. 8, L. 1977; Sec. 68-1413, R.C.M. 1947; (2)En. Sec. 9, Ch. 130, L. 1963; amd. Sec. 7, Ch. 8, L. 1977; Sec. 68-1409, R.C.M. 1947; R.C.M. 1947, 68-1409(part), 68-1413; amd. Sec. 2, Ch. 249, L. 1985; amd. Sec. 2, Ch. 139, L. 1989; amd. Sec. 168, Ch. 265, L. 1993; amd. Sec. 1, Ch. 98, L. 2001; amd. Sec. 90, Ch. 99, L. 2001.

Compiler's Comments
2001 Amendments — Composite Section: Chapter 98 after "equal to" substituted "2.5%" for "2%". Amendment effective October 1, 2001.

Chapter 99 near middle after "member's" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

19-8-604. Early retirement benefit. If a member is discontinued from service after having completed 5 years of membership service but before reaching retirement age, the member must, upon filing a written application with the board, be paid a retirement benefit beginning on the member's 55th birthday calculated under the provisions of 19-8-603.
History: En. Sec. 15, Ch. 130, L. 1963; amd. Sec. 10, Ch. 8, L. 1977; R.C.M. 1947, 68-1415; amd. Sec. 4, Ch. 592, L. 1981; amd. Sec. 5, Ch. 53, L. 1983; amd. Sec. 169, Ch. 265, L. 1993; amd. Sec. 7, Ch. 223, L. 1997.

Cross-References
PERS — early retirement benefit, 19-3-906.
Judges' retirement — involuntary retirement benefit, 19-5-503.
Highway patrol retirement — early retirement benefit, 19-6-503.
Firefighters' retirement — partial service pension, 19-18-603.
Teachers' retirement — early retirement, 19-20-802.

Part 7
Disability Retirement Benefits

Part Cross-References
Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — disability retirement, Title 19, ch. 3, part 10.
Judges' retirement — disability retirement benefits, Title 19, ch. 5, part 6.
Highway patrol retirement — disability retirement benefits, Title 19, ch. 6, part 6.

Sheriffs' retirement — disability retirement benefits, Title 19, ch. 7, part 6.
Police retirement — statewide plan — disability retirement benefits, Title 19, ch. 9, part 9.
Firefighters' unified retirement — disability retirement benefits, Title 19, ch. 13, part 8.
Teachers' retirement — disability retirement, Title 19, ch. 20, part 9.

19-8-701. Disability retirement benefit. (1) A member who is determined by the board to be disabled must be granted a disability retirement benefit in an amount calculated on the actuarial equivalent of the service retirement benefit standing to the member's credit at the time of the member's disability retirement.

(2) If the disability is a direct result of any service to the state in the line of duty and the member has at least 5 years of membership service, the member who is disabled must be retired on a disability retirement benefit of not less than one-half of the member's highest average compensation.

History: En. Sec. 14, Ch. 130, L. 1963; amd. Sec. 20, Ch. 326, L. 1974; R.C.M. 1947, 68-1414; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 3, Ch. 139, L. 1989; amd. Sec. 170, Ch. 265, L. 1993; amd. Sec. 8, Ch. 223, L. 1997; amd. Sec. 91, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at end of (2) after "member's" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

Cross-References

Disability benefits — exclusion from income tax, 15-30-111.
Disability defined, 19-2-303.
Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.

19-8-702. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 21, Ch. 130, L. 1963; amd. Sec. 12, Ch. 8, L. 1977; amd. Sec. 6, Ch. 330, L. 1977; R.C.M. 1947, 68-1421; amd. Sec. 14, Ch. 196, L. 1989.

19-8-703. Renumbered 19-8-1001 by Code Commissioner, 1993.

19-8-704. Renumbered 19-8-1002 by Code Commissioner, 1993.

19-8-705 through 19-8-710 reserved.

19-8-711. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 7, Ch. 597, L. 1981.

19-8-712. Medical examination of disability retiree — cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may file a written application with the board requesting that the board reconsider its action. The request for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability

may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(4) The member's former employer may request a medical or psychological review as to the ability of the recipient to return to work as a peace officer. If the board's findings are upheld, the former employer shall pay the cost of the review.

History: En. Sec. 8, Ch. 597, L. 1981; amd. Sec. 3, Ch. 138, L. 1989; amd. Sec. 171, Ch. 265, L. 1993; amd. Sec. 20, Ch. 412, L. 1995; amd. Sec. 9, Ch. 223, L. 1997; amd. Sec. 30, Ch. 370, L. 1997; amd. Sec. 65, Ch. 562, L. 1999; amd. Sec. 92, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (2) near middle of third sentence after "recipient may" substituted "file a written application with the board requesting that the board reconsider" for "submit a written application to the board to request the board to reconsider" and in fourth sentence after "reconsideration must be" substituted "filed" for "made in writing". Amendment effective March 21, 2001.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1015.

Judges' retirement — medical examination of disability retiree — cancellation of benefit, 19-5-612.

Highway patrol retirement — medical examination of disability retiree — cancellation of benefit, 19-6-612.

Sheriffs' retirement — medical examination of disability retiree — cancellation of benefit, 19-7-612.

Police retirement — statewide plan — disability — reinstatement upon termination of benefit, 19-9-905.

Firefighters' unified retirement — medical examination of disability retiree — cancellation of benefit, 19-13-804.

Teachers' retirement — medical examination of disability retiree, 19-20-903.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-20-905.

Part 8
Optional Forms of Benefit Payments

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.

Exemption from taxes and legal process — exceptions, 19-2-1004.

19-8-801. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must, in lieu of all other benefits under this chapter, be converted into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit to a contingent annuitant as follows:

(a) option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary was not granted the right to receive the optional retirement benefit as part of the dissolution settlement or a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the dissolution settlement or family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the value of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change.

History: En. Sec. 27, Ch. 130, L. 1963; amd. Sec. 15, Ch. 8, L. 1977; R.C.M. 1947, 68-1427; amd. Sec. 3, Ch. 126, L. 1987; amd. Sec. 175, Ch. 265, L. 1993; amd. Sec. 4, Ch. 217, L. 1999; amd. Sec. 66, Ch. 562, L. 1999; amd. Sec. 93, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) at end of second sentence after "contingent annuitant" deleted "that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits"; in (1)(c) after "amounts" inserted "payable to a contingent annuitant"; in (2) at beginning of first sentence substituted "The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board" for "Election of an optional retirement benefit must be by written application filed" and inserted second sentence requiring identification of a contingent annuitant; in (4) near middle after "member's" substituted "written application electing or changing an election" for "election or changed election" and at end after "void" deleted "and the death is considered as that of a member before retirement"; in (5)(a) near beginning after "that is" substituted "initially effective on or after October 1, 1999" for "effective after October 1, 1999"; in (7)(a) at beginning substituted "Upon filing a written application with the board" for "Upon written application to the board"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

PERS — optional forms of benefits, 19-3-1501.

Judges' retirement — optional forms of benefits, 19-5-701.

Sheriffs' retirement — optional forms of benefits, 19-7-1001.

Teachers' retirement — optional allowances, 19-20-702.

19-8-802 through 19-8-807. Repealed. Sec. 236, Ch. 265, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

19-8-802. En. Sec. 19, Ch. 130, L. 1963; amd. Sec. 7, Ch. 332, L. 1977; R.C.M. 1947, 68-1419(part).

19-8-803. En. Sec. 24, Ch. 130, L. 1963; R.C.M. 1947, 68-1424.

19-8-804. En. Sec. 23, Ch. 130, L. 1963; R.C.M. 1947, 68-1423(part).

19-8-805. En. Sec. 20, Ch. 130, L. 1963; amd. Sec. 5, Ch. 214, L. 1977; R.C.M. 1947, 68-1420; amd. Sec. 15, Ch. 464, L. 1985; amd. Sec. 11, Ch. 823, L. 1991.

19-8-806. En. 68-1420.1 by Sec. 6, Ch. 214, L. 1977; R.C.M. 1947, 68-1420.1.

19-8-807. En. Sec. 1, Ch. 14, L. 1987.

19-8-808. Renumbered 19-8-1101 by Code Commissioner, 1993.

19-8-809. Renumbered 19-8-1102 by Code Commissioner, 1993.

19-8-810. Renumbered 19-8-1103 by Code Commissioner, 1993.

19-8-811 through 19-8-815 reserved.

19-8-816. Renumbered 19-8-1104 by Code Commissioner, 1993.

Part 9
Service Credit

Part Cross-References

PERS — service credit and additional contributions, Title 19, ch. 2, part 7.

19-8-901. Application to purchase military service. (1) (a) Except as otherwise provided in this section and subject to 19-8-906, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits.

(b) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation as determined by the board.

(2) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

History: En. Sec. 22, Ch. 130, L. 1963; amd. Sec. 13, Ch. 8, L. 1977; R.C.M. 1947, 68-1422; (3), (4)En. Sec. 1, Ch. 119, L. 1983; amd. Sec. 164, Ch. 265, L. 1993; Sec. 19-8-304, MCA 1991; redes. 19-8-901 by Code Commissioner, 1993; amd. Sec. 67, Ch. 562, L. 1999; amd. Sec. 94, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning of (1)(a) inserted exception clause, after "member with" substituted "at least 15 years of service credit may" for "15 years or more of service credit qualified under this chapter may", near middle after "retirement" substituted "file a written application with the board to purchase up to 5 years" for "make a written application with the board to qualify all or any portion", and at end after "benefits" deleted "up to a maximum of 5 years, if the member is not otherwise eligible to receive credit for this service"; at beginning of (1)(b) substituted "To purchase this military service, the member shall pay the actuarial cost of the member's military service" for "To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service" and deleted former second sentence that read: "The member may not qualify more years of military service than the member has years of service credits in excess of 15 years"; inserted (2) establishing conditions of ineligibility to purchase military service; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Veteran defined, 10-2-101.
Reemployment of public employee upon completion of military service, 10-2-221.
PERS — election to qualify military service, 19-3-503.
Highway patrol retirement — election to qualify military service, 19-6-801.
Sheriffs' retirement — election to qualify previous military service, 19-7-803.
Police retirement — statewide plan — election to qualify previous military service, 19-9-403.
Firefighters' unified retirement — election to qualify previous military service, 19-13-403.
Police retirement — local funds — credit for military service, 19-19-405.
Police retirement — local funds — election to qualify previous military service, 19-19-406.
Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-20-404.

19-8-902. Purchase of other Montana public service. (1) (a) A member may, at any time before retirement, file a written application with the board to purchase all or any portion of the member's service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or municipal police officers' retirement system to the extent that the member either has received or is eligible to receive a refund of the member's accumulated contributions. To purchase this service, the member shall pay the actuarial cost of the service in the game wardens' and peace officers' retirement system, as determined by the board, based on the system's most recent actuarial valuation minus the employer contribution provided in subsection (1)(b).

(b) Upon receiving the member's payment under subsection (1)(a), the board shall transfer from the member's former retirement system to the game wardens' and peace officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the game wardens' and peace officers' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, file a written application with the board to purchase all or a portion of full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's public employer. The board shall grant service credit subject to the board's rules. To purchase service under this section, the employee shall pay the actuarial cost of the service in the game wardens' and peace officers' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

History: En. Sec. 4, Ch. 145, L. 1981; amd. Sec. 4, Ch. 331, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 165, Ch. 265, L. 1993; Sec. 19-8-306, MCA 1991; redes. 19-8-902 by Code Commissioner, 1993; amd. Sec. 21, Ch. 412, L. 1995; amd. Sec. 10, Ch. 223, L. 1997; amd. Sec. 68, Ch. 562, L. 1999; amd. Sec. 95, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1)(a) near beginning of first sentence after "retirement" substituted "file a written application with the board to purchase" for "make a written election with the board to qualify" and at beginning of second sentence substituted "To purchase" for "To qualify" and after "member shall" substituted "pay the actuarial cost of the service" for "contribute to the pension trust fund the actuarial cost of granting the service"; in (2)(a) near beginning of first sentence after "retirement" substituted "file a written application with the board to purchase all or a portion of" for "make a written election with the board to qualify any" and at beginning of fourth sentence substituted "To purchase service under this section, the employee shall pay the actuarial cost of the service" for "upon contribution by the employee of the actuarial cost of granting this service"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

PERS — qualification of other Montana public service, 19-3-509.
Highway patrol retirement — qualification of other Montana public service, 19-6-802.
Sheriffs' retirement — qualification of other Montana public service, 19-7-802.
Police retirement — statewide plan — qualification of other Montana public service, 19-9-405.
Firefighters' unified retirement — qualification of other Montana public service, 19-13-404.

19-8-903. Employment in United States government. (1) A member who is assigned to an agency of the United States government under Title IV, the Intergovernmental Personnel Act of 1970, may purchase the federal employment in the retirement system under subsection (2) of this section if:

(a) the member has accumulated at least 5 years of membership service; and

(b) the member returns to full-time service for at least 1 year after completing employment in the United States government.

(2) A member who is assigned to an agency of the United States government has the option to:

(a) continue the member's payments into the pension trust fund; or

(b) pay an amount equal to the normal employer and employee contributions plus interest within 2 years after the member's return to active state peace officer status.

(3) Compensation earned while on assignment to an agency of the United States government must be considered compensation for purposes of the retirement system and may be included in the determination of highest average compensation, provided that the highest average compensation does not exceed 100% of the member's highest monthly compensation earned as a state peace officer.

History: En. Sec. 1, Ch. 260, L. 1981; amd. Sec. 166, Ch. 265, L. 1993; Sec. 19-8-307, MCA 1991; redes. 19-8-903 by Code Commissioner, 1993; amd. Sec. 11, Ch. 223, L. 1997; amd. Sec. 96, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) in introductory clause after "1970" substituted "may purchase" for "may qualify"; in (3) in two places substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

19-8-904. Application to purchase additional service. (1) Subject to 19-8-906, a member with at least 5 years of membership service, may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service that the member has qualified in the retirement system.

(2) To purchase service under this section, a member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation as determined by the board.

(3) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement.

History: En. Sec. 3, Ch. 180, L. 1995; amd. Sec. 35, Ch. 58, L. 1999; amd. Sec. 97, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning of (1) substituted "Subject to 19-8-906, a member with at least 5 years of membership service, may, at any time before retirement, file a written application with the board to purchase" for "At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase"; at beginning of (2) substituted "To purchase service under this section, a member shall pay the actuarial cost of the service" for "For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service"; deleted former (3) that read: "(3) A member may elect to qualify no more than a combined total of 5 years of service under 19-2-707, 19-8-901, 19-8-903, and this section"; and made minor changes in style. Amendment effective March 21, 2001.

19-8-905. Absence due to injury or illness. (1) Time, not to exceed 5 years, during which a member is absent because of an injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service credits for the absence unless the member complies with subsections (2) and (3), in which case the absence is considered as time spent in service for both service credits and membership service.

(2) (a) A member absent because of an employment-related injury entitling the member to workers' compensation payments may, upon the member's return to service, contribute an amount equal to the contributions that the member would have made on the basis of the member's compensation at the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to covered service to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to covered service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).

(4) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602 or for the period of time during which benefits are received if the member retires during the absence.

History: En. Sec. 2, Ch. 370, L. 1997; amd. Sec. 36, Ch. 58, L. 1999.

19-8-906. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service under 19-8-901 and 19-8-904.

History: En. Sec. 98, Ch. 99, L. 2001.

Compiler's Comments

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

Part 10
Survivorship Benefits and Death Payments

Part Cross-References

Beneficiaries, Title 19, ch. 2, part 8.
Designation of beneficiary, 19-2-801.
Limitations on payment to person causing member's death or disability, 19-2-804.
Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.

19-8-1001. Benefits upon employment-related death. If the board finds that a member died as a direct and proximate result of injury received in the course of the member's service, a monthly survivorship benefit must be paid to the member's designated beneficiary equal to 50% of the highest average compensation of the member. If the deceased member has completed more than 25 years of service credit, the survivorship benefit must equal 2% of the member's highest average compensation for each year of service credit.

History: En. Sec. 17, Ch. 130, L. 1963; amd. Sec. 11, Ch. 8, L. 1977; amd. Sec. 2, Ch. 578, L. 1977; R.C.M. 1947, 68-1417; amd. Sec. 4, Ch. 139, L. 1989; amd. Sec. 172, Ch. 265, L. 1993; Sec. 19-8-703, MCA 1991; redes. 19-8-1001 by Code Commissioner, 1993; amd. Sec. 99, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 near end of first sentence substituted "highest average compensation" for "final average salary", and inserted second sentence regarding amount of survivorship benefit for a deceased member who completed more than 25 years of service credit. Amendment effective March 21, 2001.

19-8-1002. Postretirement death payments. If a member who retires on or after July 1, 1997, dies without designating a contingent annuitant under 19-8-801, the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

History: En. Sec. 18, Ch. 130, L. 1963; R.C.M. 1947, 68-1418; amd. Sec. 173, Ch. 265, L. 1993; Sec. 19-8-704, MCA 1991; redes. 19-8-1002 by Code Commissioner, 1993; amd. Sec. 25, Ch. 287, L. 1997; amd. Sec. 69, Ch. 562, L. 1999.

19-8-1003. Nonduty-related death of active member. If a member dies before reaching retirement age, the member's designated beneficiary may choose either a lump-sum refund of the member's accumulated contributions or the actuarial equivalent of the early retirement benefit as provided in 19-8-604.

History: En. Sec. 174, Ch. 265, L. 1993.

Part 11
Postretirement Benefits and Benefit Increases

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.

19-8-1101. Repealed. Sec. 38, Ch. 287, L. 1997.

History: En. Sec. 1, Ch. 115, L. 1989; amd. Sec. 176, Ch. 265, L. 1993; Sec. 19-8-808, MCA 1991; redes. 19-8-1101 by Code Commissioner, 1993.

19-8-1102. Repealed. Sec. 38, Ch. 287, L. 1997.

History: En. Sec. 2, Ch. 115, L. 1989; amd. Sec. 177, Ch. 265, L. 1993; Sec. 19-8-809, MCA 1991; redes. 19-8-1102 by Code Commissioner, 1993.

19-8-1103. Repealed. Sec. 38, Ch. 287, L. 1997.

History: En. Sec. 3, Ch. 115, L. 1989; amd. Sec. 178, Ch. 265, L. 1993; Sec. 19-8-810, MCA 1991; redes. 19-8-1103 by Code Commissioner, 1993.

19-8-1104. Minimum monthly benefit. (1) The following members who retired before July 1, 1989, and their contingent annuitants or their designated beneficiaries receiving monthly survivorship benefits are eligible to receive a minimum monthly benefit as provided in subsection (2):

(a) a member who is 55 years of age or older and who is receiving a service retirement benefit, unless the member is employed in a position covered by a retirement system under Title 19, chapters 3, 5 through 9, 13, and 17 through 20;

(b) a member who is receiving a disability retirement benefit; and

(c) a designated beneficiary receiving a survivorship benefit or a contingent annuitant receiving a service or disability retirement benefit.

(2) (a) Except as provided in subsection (2)(b), on July 1, 1989, the monthly benefit of a benefit recipient eligible under subsection (1) may not be less than 2% of a probationary state game warden's base compensation on July 1, 1989, for each year of the member's service credits.

(b) A monthly retirement benefit increased under subsection (2)(a) may not exceed 60% of a probationary state game warden's base compensation on July 1, 1989.

History: En. Sec. 1, Ch. 139, L. 1989; amd. Sec. 179, Ch. 265, L. 1993; Sec. 19-8-816, MCA 1991; redes. 19-8-1104 by Code Commissioner, 1993.

19-8-1105. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 3% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made.

(4) The board shall adopt rules to administer the provisions of this section.

History: En. Sec. 1, Ch. 287, L. 1997; amd. Sec. 70, Ch. 562, L. 1999; amd. Sec. 5, Ch. 62, L. 2001; amd. Sec. 13, Ch. 149, L. 2001; amd. Sec. 5, Ch. 309, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-8-1106 through 19-8-1109 reserved.

19-8-1110. Ad hoc cost-of-living increase. (1) The recipient of a monthly service, disability, or survivorship benefit is eligible for a one-time cost-of-living increase on July 1, 1993, if the benefit was initiated before July 1, 1988. A person who received a lump-sum payment or is receiving an annuitized payment is not an eligible recipient under this section.

(2) The amount of the increase for each eligible benefit recipient under subsection (1) must be calculated by:

(a) dividing 5% of the total monthly benefits paid to all eligible benefit recipients as of June 30, 1993, by the total years of service of all eligible benefit recipients as of June 30, 1993;

(b) multiplying the quotient by the individual eligible benefit recipient's years of service, except as provided in subsection (3); and

(c) multiplying the product by the appropriate optional factor for option 2, 3, or 4 benefits described in 19-7-1001.

(3) For the purposes of this section, the increase for a recipient of a disability or survivorship benefit must be calculated as if the recipient had 25 years of service.

(4) The board may adopt rules to implement this section.

History: En. Secs. 1, 2, Ch. 450, L. 1993.

CHAPTER 9

POLICE RETIREMENT — STATEWIDE PLAN

Part 1 — General Provisions

19-9-101. Short title.
19-9-102. Purpose — application of prior law.
19-9-103. Municipal police officers' retirement system established.
19-9-104. Definitions.
19-9-105. Renumbered 19-9-205 by Code Commissioner, 1993.
19-9-106. Renumbered 19-9-206 by Code Commissioner, 1993.
19-9-107. Renumbered 19-9-207 by Code Commissioner, 1993.
19-9-108. Repealed.

Part 2 — Extension of Coverage by Local Government Employers

19-9-201. Repealed.
19-9-202. Repealed.
19-9-203. Repealed.
19-9-204. Terminated.
19-9-205. Transfer of assets and liabilities from prior plans.
19-9-206. Effect on members of prior plans.
19-9-207. Election to join retirement system — transfer of assets.
19-9-208. Repealed.
19-9-209. Taxing authority of employers.

Part 3 — Eligibility, Membership, and Vesting

19-9-301. Active membership — inactive vested member — inactive nonvested member.
19-9-302. Ineligibility for other retirement plans.
19-9-303. Repealed.
19-9-304. Repealed.
19-9-305. Repealed.

Part 4 — Service Credit

19-9-401. Repealed.
19-9-402. Repealed.
19-9-403. Application to purchase military service.
19-9-404. Service under sheriffs' retirement system prior to or following city-county consolidation.
19-9-405. Purchase of other Montana public service.
19-9-406. Service purchase limitation.
19-9-407 through 19-9-409 reserved.
19-9-410. Transfer to public employees' retirement system.
19-9-411. Application to purchase additional service.

Part 5 — Financial Management (Renumbered and Repealed)

Part 6 — Employee Contributions (Renumbered and Repealed)

Part 7 — Contributions

19-9-701. Repealed.
19-9-702. State contribution.
19-9-703. Employer contribution.
19-9-704. Renumbered 19-9-209 by Code Commissioner, 1993.
19-9-705. Other money credited as employer contributions.
19-9-706. Contributions based on total compensation when member receives disability compensation.
19-9-707. Repealed.
19-9-708 and 19-9-709 reserved.
19-9-710. Member's contribution.

Part 8 — Service Retirement Benefits

19-9-801. Eligibility for service retirement — commencement of benefit.
19-9-802. Repealed.
19-9-803. Repealed.
19-9-804. Amount of service retirement benefit — continuation of benefit after death of member.

Part 9 — Disability Retirement Benefits

19-9-901. Repealed.
19-9-902. Eligibility for disability retirement.
19-9-903. Amount of disability retirement benefit — continuation of benefit after death of member.
19-9-904. Termination of disability benefit.
19-9-905. Reinstatement upon termination of disability benefit.
19-9-906 through 19-9-910 reserved.
19-9-911. Renumbered 19-9-1101 by Code Commissioner, 1993.
19-9-912. Renumbered 19-9-1102 by Code Commissioner, 1993.

Part 10 — Postretirement Benefits and Benefit Increases

19-9-1001. Repealed.
19-9-1002. Repealed.
19-9-1003. Repealed.
19-9-1004. Renumbered 19-2-906.
19-9-1005. Repealed.
19-9-1006. Repealed.
19-9-1007. Minimum benefit adjustment.
19-9-1008. Repealed.
19-9-1009. Guaranteed annual benefit adjustment.
19-9-1010. Original election — guaranteed annual benefit adjustment.
19-9-1011. Repealed.
19-9-1012. Repealed.
19-9-1013. Extended election — guaranteed annual benefit adjustment.
19-9-1014 through 19-9-1019 reserved.
19-9-1020. One-time permanent ad hoc purchasing power adjustment.

Part 11 — Survivorship Benefits and Death Payments

19-9-1101. Preretirement death benefits.
19-9-1102. Payments in absence of spouse or child.

Part 12 — Deferred Retirement Option Plan (DROP)

19-9-1201. Short title.
19-9-1202. Definitions.
19-9-1203. Deferred retirement option plan established — compliance with federal law — rulemaking.
19-9-1204. Eligibility — participation criteria — membership status — service interruptions.
19-9-1205. Retirement system contributions — benefit payments to individual accounts — investment returns.
19-9-1206. Survivorship benefits.
19-9-1207. Employment and benefits after DROP period.
19-9-1208. Distribution of DROP benefit.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Municipal police force, Title 7, ch. 32, part 41.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
The Public Employees' Retirement Act — general provisions, Title 19, ch. 2.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Firefighters' unified retirement system, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.

Part 1
General Provisions

19-9-101. Short title. This chapter may be cited as the "Municipal Police Officers' Retirement Act".

History: En. 11-1860 by Sec. 1, Ch. 456, L. 1977; R.C.M. 1947, 11-1860.

19-9-102. Purpose — application of prior law. (1) As cities other than those participating in the statewide police reserve fund provided for in Chapter 335, Laws of 1974, currently have local police retirement funds, the legislature finds and declares that the law regarding such funds, although in conflict with this chapter, cannot be repealed. It is the express intention of the legislature to allow two separate and distinct retirement systems to exist. The first, which includes local police retirement funds, applies to such cities, other than those of the first and second class, that wish to adopt it. The second, created by this chapter, applies to first- and second-class cities, those other cities that wish to adopt it, and any city that has adopted the above-mentioned statewide police reserve fund.

(2) The following may not be applied in any way to a city operating under the plan created by this chapter: 7-32-4107, 7-32-4120, 7-32-4131, and chapter 19 of this title.

History: En. 11-1892 by Sec. 33, Ch. 456, L. 1977; R.C.M. 1947, 11-1892; amd. Sec. 11, Ch. 114, L. 1979.

19-9-103. Municipal police officers' retirement system established. There is a retirement plan known as the municipal police officers' retirement system. The plan is governed by the provisions of chapter 2 and this chapter.

History: En. 11-1862 by Sec. 3, Ch. 456, L. 1977; R.C.M. 1947, 11-1862; amd. Sec. 180, Ch. 265, L. 1993; amd. Sec. 71, Ch. 562, L. 1999.

Cross-References

Public Employees' Retirement Board — administration, Title 19, ch. 2, part 4.

Police retirement — local funds, Title 19, ch. 19.

19-9-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means the remuneration, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code have been made.

(2) "Dependent child" means a child of a deceased member:

(a) who is unmarried and under 18 years of age; or

(b) who is unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) "Employer" means any city that participated in a prior plan or that elects to join this retirement system under 19-9-207.

(4) "Final average compensation" means the monthly compensation of a member, averaged over the last 36 months of the member's service or, in the event a member has not been a member that long, over the period of membership.

(5) "Minimum retirement date" means the first day of the month coinciding with or, if none coincides, the date on which a member both becomes age 50 and completes 5 years of membership service.

(6) Any reference to "municipality", "city", or "town" includes those jurisdictions that, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(7) "Police officer" means an appointed, lawfully trained, appropriately salaried, and regularly acting officer with the requisite professional certification and licensing.

(8) "Prior plan" means the local police reserve or pension trust fund of a city that elects to join the retirement system under 19-9-207.

(9) "Retirement date" means the date on which the first payment of the retirement, disability, or survivorship benefits of a member or a survivor is payable.

(10) "Surviving spouse" means the spouse married to a member at the time of the member's death.

(11) "Survivor" means a surviving spouse or dependent child of the member.

History: (1), (3) thru (15), (17) thru (23)En. 11-1861 by Sec. 2, Ch. 456, L. 1977; Sec. 11-1861, R.C.M. 1947; (16)En. 11-1839.1 by Sec. 1, Ch. 489, L. 1977; Sec. 11-1839.1, R.C.M. 1947; R.C.M. 1947, 11-1839.1, 11-1861; amd. Sec. 1, Ch. 457, L. 1979; amd. Sec. 1, Ch. 186, L. 1983; amd. Sec. 15, Ch. 282, L. 1983; amd. Sec. 4, Ch. 86, L. 1985; amd. Sec. 1, Ch. 350, L. 1985; amd. Sec. 1, Ch. 178, L. 1991; amd. Sec. 1, Ch. 631, L. 1991;

amd. Secs. 1, 9, Ch. 822, L. 1991; amd. Sec. 181, Ch. 265, L. 1993; amd. Sec. 1, Ch. 250, L. 1997; amd. Sec. 37, Ch. 58, L. 1999; amd. Sec. 100, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 inserted definition of police officer; and made minor changes in style. Amendment effective March 21, 2001.

19-9-105. Renumbered 19-9-205 by Code Commissioner, 1993.

19-9-106. Renumbered 19-9-206 by Code Commissioner, 1993.

19-9-107. Renumbered 19-9-207 by Code Commissioner, 1993.

19-9-108. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1886 by Sec. 27, Ch. 456, L. 1977; R.C.M. 1947, 11-1886(1), (3).

Part 2

Extension of Coverage by Local Government Employers

19-9-201. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1878 by Sec. 19, Ch. 456, L. 1977; R.C.M. 1947, 11-1878(1), (2).

19-9-202. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1891 by Sec. 32, Ch. 456, L. 1977; R.C.M. 1947, 11-1891.

19-9-203. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1883 by Sec. 24, Ch. 456, L. 1977; R.C.M. 1947, 11-1883; amd. Sec. 5, Ch. 235, L. 1981; amd. Sec. 16, Ch. 282, L. 1983.

19-9-204. Terminated. Sec. 7, Ch. 328, L. 1987.

History: En. Sec. 3, Ch. 328, L. 1987.

19-9-205. Transfer of assets and liabilities from prior plans. All funds and obligations constituting the assets and liabilities of prior plans, regardless of their form or who holds them, must be transferred to the pension trust fund.

History: En. 11-1880 by Sec. 21, Ch. 456, L. 1977; R.C.M. 1947, 11-1880; amd. Sec. 182, Ch. 265, L. 1993; Sec. 19-9-105, MCA 1991; redes. 19-9-205 by Code Commissioner, 1993.

Cross-References

Sheriffs' retirement — service under municipal police officers' retirement system prior to or following city-county consolidation, 19-7-801.

19-9-206. Effect on members of prior plans. (1) All provisions of this retirement system are effective as to a member whose retirement date occurred prior to July 1, 1977, except that the amount and mode of payment of the member's retirement benefit must remain unchanged.

(2) This chapter may not decrease the benefits of a member under a prior plan.

History: En. 11-1881 by Sec. 22, Ch. 456, L. 1977; R.C.M. 1947, 11-1881; amd. Sec. 183, Ch. 265, L. 1993; Sec. 19-9-106, MCA 1991; redes. 19-9-206 by Code Commissioner, 1993.

19-9-207. Election to join retirement system — transfer of assets. (1) Cities other than those participating in the statewide police reserve fund administered by the board in accordance with Chapter 335, Laws of 1974, as of June 30, 1977, may elect to join the retirement system by passing an ordinance stating the election and the consent of the city to be bound by the provisions of this retirement system. Upon the enactment of an ordinance, the provisions of this retirement system become applicable to the city. Any city enacting an election ordinance shall send a certified copy of the ordinance to the board and shall, as soon as possible, deposit all cash and securities held by it in its local police reserve or retirement fund into the municipal police officers' pension trust fund. The value of the securities must be determined by the board.

(2) The trustees or other administrative head of the local plan as of the effective date of the election shall certify the proportion, if any, of the funds of the plan that represents the accumulated contributions of the active members and the relative shares of the members as of that date. The shares must be charged to the employer and credited to the respective members in the retirement system and administered as if the contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section must be offset, with interest, against future required employer contributions for a period determined by the board. Any excess of employer charges over credits under this section

are payable by the employer, with interest, for a period of 10 years or less as determined by the board.

History: En. 11-1885 by Sec. 26, Ch. 456, L. 1977; R.C.M. 1947, 11-1885; amd. Sec. 1, Ch. 375, L. 1979; amd. Sec. 1, Ch. 286, L. 1983; amd. Sec. 184, Ch. 265, L. 1993; Sec. 19-9-107, MCA 1991; redes. 19-9-207 by Code Commissioner, 1993.

19-9-208. Repealed. Sec. 40, Ch. 532, L. 1997.

History: En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(4); amd. Sec. 2, Ch. 375, L. 1979; amd. Sec. 2, Ch. 286, L. 1983; amd. Sec. 1, Ch. 661, L. 1983; amd. Sec. 185, Ch. 265, L. 1993; Sec. 19-9-503, MCA 1991; redes. 19-9-208 by Code Commissioner, 1993.

19-9-209. Taxing authority of employers. For the purpose of making contributions required of a city under this chapter, the appropriate authority of the city may, subject to 15-10-420, levy a tax that along with other revenue available for that purpose is sufficient to meet the demand.

History: En. 11-1884 by Sec. 25, Ch. 456, L. 1977; R.C.M. 1947, 11-1884; Sec. 19-9-704, MCA 1991; redes. 19-9-209 by Code Commissioner, 1993; amd. Sec. 110, Ch. 574, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 574 near middle after "chapter" substituted "the appropriate authority of the city may, subject to 15-10-420, levy a tax that along with other revenue" for "when the demand for deposits of such contributions cannot be met within the general taxing authority and other revenues available to the city for that purpose, the appropriate authority of the city may levy any addition tax authorized by law until the general taxing authority and other revenue"; deleted former (2) and (3) that read: "(2) "General taxing authority", as used in this section, means that levy which the city may make under the all-purpose levy or under multiple-purpose levies, if the city is using multiple-purpose levies.

(3) No provision of any statute relating to the all-purpose levy may be so construed as to limit the additional taxing authority created by this section"; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Municipalities — all-purpose mill levy authorized, 7-6-4451.
Firefighters' unified retirement — taxing authority of employers, 19-13-214.
Firefighters' retirement — special tax levy for fund required, 19-18-503, 19-18-504.
Police retirement — local funds — city's contribution, 19-19-301.

Part 3
Eligibility, Membership, and Vesting

Part Cross-References

The Public Employees' Retirement Act — general provisions — termination of membership and refunds, Title 19, ch. 2, part 6.
PERS — membership, Title 19, ch. 3, part 4.
Judges' retirement — membership, Title 19, ch. 5, part 3.
Highway patrol retirement — membership, Title 19, ch. 6, part 3.
Sheriffs' retirement — membership, Title 19, ch. 7, part 3.
Game wardens' and peace officers' retirement — membership, Title 19, ch. 8, part 3.
Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.
Teachers' retirement — membership, Title 19, ch. 20, part 3.

19-9-301. Active membership — inactive vested member — inactive nonvested member. (1) A police officer becomes an active member of the retirement system:

(a) on the date the police officer's service with an employer commences;

(b) on July 1, 1977, if the police officer is employed by an employer on that date; or

(c) in the case of an employer that elects to join the retirement system, as provided in 19-9-207, on the effective date of the election if the police officer is employed by the employer on that date. A person who is a member of the public employees' retirement system on the date of the employer's election may remain in the public employees' retirement system or may elect to become a member of the municipal police officers' retirement system by filing a written election with the board no later than 30 days after the date of the employer's election.

(2) Upon becoming eligible for membership, the police officer shall complete the forms and furnish the proof required by the board.

(3) A member becomes an inactive member on the first day of an approved absence from service of a substantial duration.

(4) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and

retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(5) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

History: En. 11-1863 by Sec. 4, Ch. 456, L. 1977; R.C.M. 1947, 11-1863(1), (2); amd. Sec. 186, Ch. 265, L. 1993; amd. Sec. 2, Ch. 250, L. 1997; amd. Sec. 101, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1)(c) inserted second sentence allowing a person who is a member of the public employees' retirement system on the date of the employer's election to remain in the public employees' retirement system or become a member of the municipal police officers' retirement system; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Legislators — continued participation, 5-2-304.
Law enforcement reserve and auxiliary officers — participation prohibited, 7-32-202.

19-9-302. Ineligibility for other retirement plans. No active member is eligible to be covered under any other mandatory retirement plan for police service to which an employer is required to contribute on his behalf, except the Social Security Act, while he is eligible to be covered by this plan.

History: En. 11-1863 by Sec. 4, Ch. 456, L. 1977; R.C.M. 1947, 11-1863(3).

Cross-References

Law enforcement reserve and auxiliary officers — participation prohibited, 7-32-202.
Social Security — plans for employees of political subdivisions, Title 19, ch. 1, part 5.
Employer to furnish itemized statement of deductions, 39-3-101.

19-9-303. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1864 by Sec. 5, Ch. 456, L. 1977; R.C.M. 1947, 11-1864.

19-9-304. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1873 by Sec. 14, Ch. 456, L. 1977; R.C.M. 1947, 11-1873; amd. Sec. 6, Ch. 50, L. 1991.

19-9-305. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1865 by Sec. 6, Ch. 456, L. 1977; R.C.M. 1947, 11-1865.

Part 4
Service Credit

Part Cross-References

PERS — service credit and additional contributions, Title 19, ch. 2, part 7.

19-9-401. Repealed. Sec. 97, Ch. 562, L. 1999.

History: En. 11-1863 by Sec. 4, Ch. 456, L. 1977; R.C.M. 1947, 11-1863(4); amd. Sec. 192, Ch. 265, L. 1993.

19-9-402. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1889 by Sec. 30, Ch. 456, L. 1977; R.C.M. 1947, 11-1889(part).

19-9-403. Application to purchase military service. (1) Except as otherwise provided in this section and subject to 19-9-406, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active duty service in the armed forces of the United States for the purpose of calculating retirement benefits.

(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

(3) The member may not purchase more military service than the member's years of membership service in excess of 15 years.

(4) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with a military retirement benefit based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

History: **En. 11-1842.1 by Sec. 1, Ch. 368, L. 1977; R.C.M. 1947, 11-1842.1; amd. Sec. 2, Ch. 178, L. 1991; amd. Sec. 193, Ch. 265, L. 1993; amd. Sec. 38, Ch. 58, L. 1999; amd. Sec. 102, Ch. 99, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 99 at beginning of (1) inserted exception clause, after "member with" substituted "at least 15 years of service credit" for "15 years or more of service credit", near middle after "retirement" substituted "file a written application with the board to purchase up to 5 years" for "make a written election with the board to qualify up to a maximum of 5 years", and at end deleted "if the member is not otherwise eligible to receive credit"; at beginning of (2) substituted "To purchase this military service, the member shall pay the actuarial cost of the member's military service" for "To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service to be determined by the board"; in (3) after "may not" substituted "purchase more military service than the member's years of membership service" for "qualify more of the member's military service than the member has service credit"; in (4) at beginning of introductory clause inserted "A member is not eligible to purchase military service under this section"; in (4)(a) after "United States with a" substituted "military retirement benefit based on that military service" for "normal military service retirement benefit, the member may not qualify the member's military service under subsection (1)"; inserted (4)(b) and (4)(c) regarding certain conditions of ineligibility to purchase military service; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Veteran defined, 10-2-101.

Reemployment of public employee upon completion of military service, 10-2-221.

PERS — election to qualify military service, 19-3-503.

Highway patrol retirement — election to qualify military service, 19-6-801.

Sheriffs' retirement — election to qualify previous military service, 19-7-803.

Game wardens' and peace officers' retirement — election to qualify military service, 19-8-901.

Firefighters' unified retirement — election to qualify previous military service, 19-13-403.

Police retirement — local funds — election to qualify previous military service, 19-19-406.

Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-20-404.

19-9-404. Service under sheriffs' retirement system prior to or following city-county consolidation. A law enforcement officer who has combined service in the municipal police officers' retirement system and the sheriffs' retirement system because of a city-county consolidation, as provided in 19-7-801, is eligible for benefits as provided in 19-7-801.

History: **En. Sec. 2, Ch. 122, L. 1979.**

Cross-References

Sheriffs' retirement — service under municipal police officers' retirement system prior to or following city-county consolidation, 19-7-801.

19-9-405. Purchase of other Montana public service. (1) (a) A member may, at any time before retirement, file a written application with the board to purchase all or any portion of the member's service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or game wardens' and peace officers' retirement system to the extent that the member either has received or is eligible to receive a refund of the member's accumulated contributions.

(b) To purchase this service, the member shall pay the actuarial cost of the service in the municipal police officers' retirement system, as determined by the board, based on the system's most recent actuarial valuation minus the employer contribution provided in subsection (1)(c).

(c) Upon receiving the member's payment under subsection (1)(b), the board shall transfer from the member's former retirement system to the municipal police officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the regular contribution rate minus the employee contribution rate in the municipal police officers' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, file a written application with the board to purchase all or a portion of full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's public employer. The board shall grant service credit subject to the board's rules. To purchase service under this section, the employee shall pay the actuarial cost of the service in the municipal police officers' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

History: **En. Sec. 5, Ch. 145, L. 1981; amd. Sec. 5, Ch. 331, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 194, Ch. 265, L. 1993; amd. Sec. 22, Ch. 412, L. 1995; amd. Sec. 12, Ch. 223, L. 1997; amd. Sec. 72, Ch. 562, L. 1999; amd. Sec. 103, Ch. 99, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 99 in (1)(a) near beginning after "retirement" substituted "file a written application with the board to purchase" for "make a written election with the board to qualify"; at beginning of (1)(b) substituted "To purchase this service, the member shall pay the actuarial cost of the service" for "To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service"; in (2)(a) in first sentence after "retirement" substituted "file a written application with the board to purchase all or a portion of" for "make a written election with the board to qualify any" and at beginning of fourth sentence substituted "To purchase service under this section, the employee shall pay the actuarial cost of the service" for "upon contribution by the employee of the actuarial cost of granting this service" and near end after "based on" deleted "the employee's compensation earned during this period of service and the regular contribution rate according to"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

PERS — qualification of other Montana public service, 19-3-509.
Highway patrol retirement — qualification of other Montana public service, 19-6-802.
Sheriffs' retirement — qualification of other Montana public service, 19-7-802.
Game wardens' and peace officers' retirement — qualification of other Montana public service, 19-8-902.
Firefighters' unified retirement — qualification of other Montana public service, 19-13-404.

19-9-406. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service under 19-9-403 and 19-9-411.

History: **En. Sec. 105, Ch. 99, L. 2001.**

Compiler's Comments

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

19-9-407 through 19-9-409 reserved.

19-9-410. Transfer to public employees' retirement system. When an injured nonvested member accepts a transfer under 7-32-4136 to a nonpolice position within the municipality covered under the public employees' retirement system, all service and contributions previously credited with the municipal police officers' retirement system must be transferred from the municipal police officers' retirement system pension trust fund along with the interest to the public employees' retirement system pension trust fund. The employer contributions and interest transferred must be equal to the amount that would have been contributed if the transferred service had been normal employment covered under the public employees' retirement system.

History: **En. Sec. 195, Ch. 265, L. 1993.**

19-9-411. Application to purchase additional service. (1) Subject to 19-9-406, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase service under this section, a member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation as determined by the board.

(3) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement.

History: **En. Sec. 4, Ch. 180, L. 1995; amd. Sec. 106, Ch. 42, L. 1997; amd. Sec. 39, Ch. 58, L. 1999; amd. Sec. 104, Ch. 99, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 99 at beginning of (1) substituted "Subject to 19-9-406, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase" for "At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase" and at end after "service" deleted "that the member has qualified under the retirement system"; at beginning of (2) substituted "To purchase service under this section, a member shall pay the actuarial cost of the service" for "For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service"; deleted former (3) that read: "(3) A member may elect to qualify no more than a combined total of 5 years of service under 19-2-707, 19-9-403, and this section"; and made minor changes in style. Amendment effective March 21, 2001.

Part 5
Financial Management (Renumbered and Repealed)

Part Compiler's Comments

Sections Renumbered and Repealed:

19-9-501. Repealed. Sec. 236, Ch. 265, L. 1993.
19-9-502. Repealed. Sec. 236, Ch. 265, L. 1993.
19-9-503. Renumbered 19-9-208 by Code Commissioner, 1993.
19-9-504. Repealed. Sec. 236, Ch. 265, L. 1993.
19-9-505. Repealed. Sec. 236, Ch. 265, L. 1993.

Histories of Repealed Sections:

19-9-501. En. 11-1879 by Sec. 20, Ch. 456, L. 1977; R.C.M. 1947, 11-1879; amd. Sec. 17, Ch. 282, L. 1983.
19-9-502. En. 11-1878 by Sec. 19, Ch. 456, L. 1977; R.C.M. 1947, 11-1878(4).
19-9-504. En. 11-1882 by Sec. 23, Ch. 456, L. 1977; R.C.M. 1947, 11-1882.
19-9-505. En. 11-1888 by Sec. 29, Ch. 456, L. 1977; R.C.M. 1947, 11-1888.

Part 6
Employee Contributions (Renumbered and Repealed)

Part Compiler's Comments

Sections Renumbered and Repealed:

19-9-601. Renumbered 19-9-710 by Code Commissioner, 1993.
19-9-602. Repealed. Sec. 236, Ch. 265, L. 1993.
19-9-603. Repealed. Sec. 236, Ch. 265, L. 1993.
19-9-604. Repealed. Sec. 236, Ch. 265, L. 1993.

Histories of Repealed Sections:

19-9-602. En. 11-1867 by Sec. 8, Ch. 456, L. 1977; R.C.M. 1947, 11-1867(2).
19-9-603. En. 11-1868 by Sec. 9, Ch. 456, L. 1977; R.C.M. 1947, 11-1868; amd. Sec. 4, Ch. 103, L. 1987.
19-9-604. En. Sec. 1, Ch. 13, L. 1987.

Part 7
Contributions

Part Cross-References

Management and investment of pension trust funds, Title 19, ch. 2, part 5.
PERS — contributions, Title 19, ch. 3, part 3.
Judges' retirement — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-9-701. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(1).

19-9-702. State contribution. The state of Montana shall make its contributions from the general fund. The general fund contributions must be made annually after the end of each fiscal year but no later than November 1. The board shall notify the state auditor by September 1 of each fiscal year of the annual compensation paid to all active members during the preceding fiscal year. The state's contribution is 29.37% of compensation paid to members. The contributions are statutorily appropriated as provided in 17-7-502.

History: En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(2); amd. Sec. 4, Ch. 375, L. 1979; amd. Sec. 1, Ch. 250, L. 1981; amd. Sec. 21, Ch. 549, L. 1981; amd. Sec. 2, Ch. 661, L. 1983; amd. Sec. 20, Ch. 703, L. 1985; amd. Sec. 3, Ch. 631, L. 1991; amd. Sec. 188, Ch. 265, L. 1993; amd. Secs. 2, 8(3)(c), Ch. 445, L. 1997; amd. Sec. 23, Ch. 532, L. 1997; amd. Sec. 73, Ch. 562, L. 1999.

Cross-References

State Auditor, 2-15-601.
State Auditor as ex officio Commissioner of Insurance, 2-15-1903.
Insurance premium tax, 33-2-705.

19-9-703. Employer contribution. Each employer shall make its contribution through the city treasurer or other appropriate official out of money available to the city for that purpose. The employer's contribution, which must be paid monthly to the board, is 14.41% of the compensation paid to all active members.

History: En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(3); amd. Sec. 5, Ch. 375, L. 1979; amd. Sec. 22, Ch. 549, L. 1981; amd. Sec. 3, Ch. 661, L. 1983; amd. Sec. 4, Ch. 631, L. 1991; amd. Sec. 189, Ch. 265, L. 1993; amd. Secs. 2, 5, Ch. 620, L. 1993; amd. Sec. 4, Ch. 250, L. 1997; amd. Sec. 74, Ch. 562, L. 1999.

Cross-References

Payment of contributions by employers — accompanying reports — penalty, 19-2-506.

19-9-704. Renumbered 19-9-209 by Code Commissioner, 1993.

19-9-705. Other money credited as employer contributions. All gifts, bequests, or emoluments given to an employer or member for the benefit of the retirement system or because of any member's service as a police officer, except when specifically allowed to be retained by the member by the member's employer, and all money withheld from the compensation of a member for violation of the rules of the member's employer must be paid to the pension trust fund. The amounts are employer contributions but are in addition to the amounts required by 19-9-703.

History: En. 11-1869 by Sec. 10, Ch. 456, L. 1977; R.C.M. 1947, 11-1869; amd. Sec. 190, Ch. 265, L. 1993.

Cross-References

Judges' retirement — payments into pension trust fund, 19-5-401.
Highway patrol retirement — payments into pension trust fund, 19-6-401.
Sheriffs' retirement — sources of money in fund, 19-7-402.
Game wardens' and peace officers' retirement — contributions to pension trust fund, 19-8-501.
Firefighters' unified retirement — other money credited as employer contributions, 19-13-607.
Police retirement — local funds — gifts and money to be applied to fund, 19-19-304.

19-9-706. Contributions based on total compensation when member receives disability compensation. When a member receives compensation from both the member's employer and as benefits from the workers' compensation program under the provisions of 7-32-4132, the member's compensation reported by the employer is the same as if the member was in active service, and the member, employer, and state retirement contributions required by this chapter must be calculated and paid on that total compensation.

History: En. Sec. 4, Ch. 290, L. 1979; amd. Sec. 18, Ch. 282, L. 1983; amd. Sec. 191, Ch. 265, L. 1993; amd. Sec. 75, Ch. 562, L. 1999.

19-9-707. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 3, Ch. 138, L. 1991.

19-9-708 and 19-9-709 reserved.

19-9-710. Member's contribution. (1) Except as provided in subsection (2), the regular contribution as a percentage of compensation of each active member first employed by an employer as a police officer:

(a) on or before June 30, 1975, is 5.8%;
(b) after June 30, 1975, is 7%;
(c) after June 30, 1979, but before July 1, 1997, is 8.5%; and
(d) on and after July 1, 1997, is 9%.

(2) A member covered under 19-9-1009 or 19-9-1010 shall pay a contribution rate equal to 9% of compensation received.

(3) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsections (1) and (2) for service rendered after June 30, 1985.

(4) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part

of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(5) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and in the member's compensation as defined in 19-9-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. 11-1867 by Sec. 8, Ch. 456, L. 1977; R.C.M. 1947, 11-1867(1); amd. Sec. 3, Ch. 375, L. 1979; amd. Sec. 16, Ch. 464, L. 1985; amd. Sec. 2, Ch. 631, L. 1991; amd. Sec. 187, Ch. 265, L. 1993; amd. Sec. 1, Ch. 522, L. 1993; amd. Secs. 1, 5, Ch. 620, L. 1993; Sec. 19-9-601, MCA 1991; redes. 19-9-710 by Code Commissioner, 1993; amd. Sec. 27, Ch. 287, L. 1997; amd. Sec. 1, Ch. 463, L. 1999.

Cross-References

Refund of contributions on termination of service, 19-2-602.
Reinstatement after withdrawal of contributions, 19-2-603.
Purchase of service credits allowed, 19-2-704.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Employer to furnish itemized statement of deductions, 39-3-101.

Part 8
Service Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — service retirement, Title 19, ch. 3, part 9.
Judges' retirement — service retirement, Title 19, ch. 5, part 5.
Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.
Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.
Game wardens' and peace officers' retirement — service retirement, Title 19, ch. 8, part 6.
Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.
Teachers' retirement — superannuation retirement, Title 19, ch. 20, part 8.

19-9-801. Eligibility for service retirement — commencement of benefit. A member has attained normal retirement age and is eligible for a service retirement benefit after terminating service if:

(1) the member has completed 20 years or more of membership service; or

(2) the member has completed at least 5 years of membership service and reached 50 years of age.

History: En. 11-1889 by Sec. 30, Ch. 456, L. 1977; R.C.M. 1947, 11-1889(part); amd. Sec. 6, Ch. 53, L. 1983; amd. Sec. 5, Ch. 86, L. 1985; amd. Sec. 15, Ch. 196, L. 1989; amd. Sec. 3, Ch. 178, L. 1991; amd. Sec. 5, Ch. 631, L. 1991; amd. Secs. 2, 9, Ch. 822, L. 1991; amd. Sec. 196, Ch. 265, L. 1993; amd. Sec. 5, Ch. 250, L. 1997; amd. Sec. 32, Ch. 370, L. 1997; amd. Sec. 106, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 substituted language outlining eligibility for service retirement and commencement of benefits for former language that read: "(1) Members are eligible for retirement as provided in this section.

(2) A member is eligible to receive a service retirement benefit when the member has completed 20 years or more of membership service and has terminated service.

(3) A member who terminates service after completing at least 5 years of membership service but prior to completing 20 years of membership service is eligible to receive a service retirement benefit when the member has reached 50 years of age." Amendment effective March 21, 2001.

19-9-802. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1889, 11-1890 by Secs. 30, 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1889(2), 11-1890(part); amd. Sec. 6, Ch. 86, L. 1985; amd. Sec. 6, Ch. 631, L. 1991; amd. Secs. 3, 9, Ch. 822, L. 1991.

19-9-803. Repealed. Sec. 13, Ch. 86, L. 1985.

History: En. 11-1870 by Sec. 11, Ch. 456, L. 1977; R.C.M. 1947, 11-1870.

19-9-804. Amount of service retirement benefit — continuation of benefit after death of member. (1) A member who is eligible for service retirement must receive a retirement benefit equal to 2.5% of the member's final average compensation for each year of service credit.

(2) (a) Upon the death of a member receiving a service retirement benefit, the member's surviving spouse, if there is one, must receive a benefit equal to the amount of the member's benefit at the time of the member's death.

(b) If the member leaves one or more dependent children, then upon the member's death, if there is no surviving spouse, or upon the death of the surviving spouse, the member's surviving dependent child or children collectively if there are more than one must receive the same monthly payments that a surviving spouse would receive for as long as the child or one of the children remains a dependent child as defined in 19-9-104. The payments must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata payments to that child must cease and be made to the remaining children until all the children are no longer dependent.

History: En. 11-1890 by Sec. 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1890(part); amd. Sec. 7, Ch. 86, L. 1985; amd. Sec. 2, Ch. 350, L. 1985; amd. Sec. 2, Ch. 63, L. 1989; amd. Sec. 16, Ch. 196, L. 1989; amd. Sec. 7, Ch. 631, L. 1991; amd. Secs. 4, 9, Ch. 822, L. 1991; amd. Sec. 197, Ch. 265, L. 1993; amd. Sec. 2, Ch. 522, L. 1993; amd. Sec. 3, Ch. 620, L. 1993.

Part 9
Disability Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — disability retirement, Title 19, ch. 3, part 10.
Judges' retirement — disability retirement benefits, Title 19, ch. 5, part 6.
Highway patrol retirement — disability retirement benefits, Title 19, ch. 6, part 6.
Sheriffs' retirement — disability retirement benefits, Title 19, ch. 7, part 6.
Game wardens' and peace officers' retirement — disability retirement benefits, Title 19, ch. 8, part 7.
Firefighters' unified retirement — disability retirement benefits, Title 19, ch. 13, part 8.
Teachers' retirement — disability retirement, Title 19, ch. 20, part 9.

19-9-901. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1878 by Sec. 19, Ch. 456, L. 1977; R.C.M. 1947, 11-1878(3); amd. Sec. 9, Ch. 597, L. 1981.

19-9-902. Eligibility for disability retirement. If a member is determined by the board to be disabled, the member is entitled to a disability retirement benefit, regardless of the length of the member's service, commencing on the day following the member's termination from service.

History: En. 11-1871 by Sec. 12, Ch. 456, L. 1977; R.C.M. 1947, 11-1871; amd. Sec. 1, Ch. 389, L. 1979; amd. Sec. 5, Ch. 822, L. 1991; amd. Sec. 198, Ch. 265, L. 1993.

Cross-References

Disability defined, 19-2-303.
Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.

19-9-903. Amount of disability retirement benefit — continuation of benefit after death of member. (1) A member who is eligible under 19-9-902 before earning 20 years of service credit must receive a disability retirement benefit equal to one-half the member's final average compensation.

(2) A member who is retired under 19-9-902 and who, at the time of the member's injury or disability, was eligible at the member's option to be retired under 19-9-801 but had elected to serve years in excess of 20 years of service credit and was then serving additional years must be paid for the additional years at the rate prescribed in 19-9-804.

(3) Upon the death of a member receiving a disability retirement benefit under this section, the member's surviving spouse or dependent child is eligible for benefits as provided in 19-9-804.

History: En. 11-1890 by Sec. 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1890(4), (5); amd. Sec. 3, Ch. 350, L. 1985; amd. Sec. 8, Ch. 631, L. 1991; amd. Secs. 6, 9, Ch. 822, L. 1991; amd. Sec. 199, Ch. 265, L. 1993.

Cross-References

Disability benefits — exclusion from income tax, 15-30-111.
Disability defined, 19-2-303.
Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.

19-9-904. Termination of disability benefit. The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If an inactive member is determined by the board to be no longer disabled, the inactive member's disability retirement benefit must be canceled when the inactive member is offered a position under 19-9-905 or when, if a position is available, the former employee could not be reinstated under 19-9-905 for reasons unrelated to the disability. If the inactive member refuses to submit to a medical examination, the inactive member's disability retirement benefit must cease as of the date of the determination. The inactive member must be notified of the determination by the board. The board may review the status of an inactive member at any time.

History: En. 11-1872 by Sec. 13, Ch. 456, L. 1977; R.C.M. 1947, 11-1872(1); amd. Sec. 10, Ch. 597, L. 1981; amd. Sec. 200, Ch. 265, L. 1993; amd. Sec. 23, Ch. 412, L. 1995; amd. Sec. 33, Ch. 370, L. 1997.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1015.

Judges' retirement — medical examination of disability retiree — cancellation of benefit, 19-5-612.

Highway patrol retirement — medical examination of disability retiree — cancellation of benefit, 19-6-612.

Sheriffs' retirement — medical examination of disability retiree — cancellation of benefit, 19-7-612.

Game wardens' and peace officers' retirement — medical examination of disability retiree — cancellation of benefit, 19-8-712.

Firefighters' unified retirement — medical examination of disability retiree — cancellation of benefit, 19-13-804.

Teachers' retirement — medical examination of disability retiree, 19-20-903.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-20-905.

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

19-9-905. Reinstatement upon termination of disability benefit. (1) (a) Except as provided in subsection (1)(b), a retired member whose disability retirement benefit is canceled as provided in 19-9-904 must be reinstated to the position held by the member immediately before retirement or to a position in a comparable pay and benefit category with duties within the member's capacity, whichever is first open. The board shall advise the employer that the disability retirement benefit has been canceled and that the member is eligible for reinstatement to duty. The fact that the member was retired for disability may not prejudice any right to reinstatement to duty that the member may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(2) The city may request a medical or psychological review as to the ability of the member to return to work as a police officer. If the board's findings are upheld, the city shall pay the costs of the review.

(3) If the retired member again becomes an active member by returning to service with an employer within 30 days following receipt of notice under 19-9-904, the member must be considered to have been continuously employed during the term of the member's disability. If the retired member fails to become an active member by returning to service with an employer within 30 days following receipt of the notice, the member's termination of service is considered to have occurred as of the member's disability retirement date and the retirement benefit, if any, to which the member becomes entitled on the member's service retirement date must be determined accordingly.

History: En. 11-1872 by Sec. 13, Ch. 456, L. 1977; R.C.M. 1947, 11-1872(2), (3); amd. Sec. 11, Ch. 597, L. 1981; amd. Sec. 201, Ch. 265, L. 1993; amd. Sec. 34, Ch. 370, L. 1997.

19-9-906 through 19-9-910 reserved.

19-9-911. Renumbered 19-9-1101 by Code Commissioner, 1993.

19-9-912. Renumbered 19-9-1102 by Code Commissioner, 1993.

Part 10

Postretirement Benefits and Benefit Increases

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — minimum benefits and benefit increases, Title 19, ch. 3, part 16.
Highway patrol retirement — minimum benefits and benefit increases, Title 19, ch. 6, part 7.
Sheriffs' retirement — minimum benefits and benefit increases, Title 19, ch. 7, part 7.
Firefighters' unified retirement — minimum benefits and benefit increases, Title 19, ch. 13, part 10.

19-9-1001. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1890 by Sec. 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1890(part).

19-9-1002. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1874 by Sec. 15, Ch. 456, L. 1977; R.C.M. 1947, 11-1874.

19-9-1003. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1886 by Sec. 27, Ch. 456, L. 1977; R.C.M. 1947, 11-1886(2).

19-9-1004. Renumbered 19-2-906. Sec. 238, Ch. 265, L. 1993.

19-9-1005. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1876 by Sec. 17, Ch. 456, L. 1977; R.C.M. 1947, 11-1876; amd. Sec. 17, Ch. 464, L. 1985; amd. Sec. 12, Ch. 823, L. 1991.

19-9-1006. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1877 by Sec. 18, Ch. 456, L. 1977; R.C.M. 1947, 11-1877; amd. Sec. 12, Ch. 114, L. 1979.

19-9-1007. Minimum benefit adjustment. (1) The benefits that are paid in each fiscal year to a retired member or the member's survivors and that are not covered by 19-9-1009 may not be less than one-half of the compensation that will be paid to newly confirmed police officers in the current fiscal year in the city or town from which the member retired.

(2) If the compensation of a newly confirmed police officer has not been set for the current fiscal year in time to make minimum benefit adjustments effective July 1, the board shall make any retroactive adjustments necessary to individual minimum benefits after the current compensation has been determined.

(3) If more than one dependent child is entitled to benefits under this section by virtue of the death of a common parent, the minimum benefit paid to the dependent children under this section must be determined as if there were one dependent child and the benefits must be paid to the dependent children collectively.

History: En. 11-1846.1 by Sec. 2, Ch. 406, L. 1977; R.C.M. 1947, 11-1846.1(part); amd. Sec. 13, Ch. 114, L. 1979; amd. Sec. 2, Ch. 457, L. 1979; amd. Sec. 2, Ch. 250, L. 1981; amd. Sec. 53, Ch. 566, L. 1981; amd. Sec. 71, Ch. 575, L. 1981; amd. Sec. 4, Ch. 186, L. 1983; amd. Sec. 21, Ch. 703, L. 1985; amd. Sec. 1, Ch. 633, L. 1991; amd. Sec. 204, Ch. 265, L. 1993; amd. Sec. 28, Ch. 287, L. 1997; amd. Sec. 3, Ch. 445, L. 1997; amd. Sec. 76, Ch. 562, L. 1999; amd. Sec. 33, Ch. 7, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 7 near middle of (2) after "July 1, the" substituted "board" for "division". Amendment effective October 1, 2001.

Cross-References

PERS — adjustment of benefit for certain members, 19-3-905.
Highway patrol retirement — supplemental benefits for certain retirees, 19-6-709.
Police retirement — local funds — supplement to certain pensions, 19-19-506.

19-9-1008. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 14, Ch. 114, L. 1979.

19-9-1009. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section.

History: En. Sec. 3, Ch. 287, L. 1997; amd. Sec. 77, Ch. 562, L. 1999; amd. Sec. 6, Ch. 62, L. 2001; amd. Sec. 14, Ch. 149, L. 2001; amd. Sec. 6, Ch. 309, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3)(a) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-9-1010. Original election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 1999; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2000, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-9-1009 remains valid. The decision of a member who elected not to participate under 19-9-1009 may be reversed under this section.

History: En. Sec. 2, Ch. 463, L. 1999; amd. Sec. 15, Ch. 149, L. 2001; amd. Sec. 7, Ch. 309, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3)(a) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-9-1011. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 710, L. 1985; amd. Sec. 1, Ch. 93, L. 1987; amd. Sec. 1, Ch. 282, L. 1989; amd. Sec. 8, Ch. 822, L. 1991.

19-9-1012. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 14, L. 1987.

19-9-1013. Extended election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-9-1009 or 19-9-1010 remains valid. The decision of a member who elected not to participate under 19-9-1009 and 19-9-1010 may be reversed under this section.

History: En. Sec. 16, Ch. 149, L. 2001.

Compiler's Comments

Effective Date: Section 22, Ch. 149, L. 2001, provided that this section is effective on passage and approval. Approved March 29, 2001.

19-9-1014 through 19-9-1019 reserved.

19-9-1020. One-time permanent ad hoc purchasing power adjustment. Beginning with the first benefit payment after April 28, 2001, the board shall provide a one-time permanent ad hoc benefit increase to retired members and beneficiaries of the retirement system who are receiving a monthly retirement benefit and who are not covered by 19-9-1013. The ad hoc benefit increase must be calculated by the board actuary and approved by the board. The benefit increase must be designed to bring the benefit recipient's current benefit up to a level estimated to be no less than 75% of the purchasing power of the original recipient's initial monthly benefit. Purchasing power must be calculated considering the date that the first benefit was paid to the original benefit recipient, applicable benefit increases since that date, and a comparison with the consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor since the date the first benefit was paid to the original benefit recipient.

History: En. Sec. 1, Ch. 391, L. 2001; amd. Sec. 3, Ch. 391, L. 2001.

Compiler's Comments

2001 Coordination Amendment: Section 3, Ch. 391, L. 2001, a coordination instruction, provided that if House Bill No. 294 was passed and approved, then at the end of the first sentence "19-9-1009 or 19-9-1010" must be changed to "19-9-1013". House Bill No. 294 became Ch. 149, L. 2001.

Effective Date: Section 4, Ch. 391, L. 2001, provided that this section is effective April 28, 2001.

Part 11
Survivorship Benefits and Death Payments

Part Cross-References

Beneficiaries, Title 19, ch. 2, part 8.
Designation of beneficiary, 19-2-801.
Limitations on payment to person causing member's death or disability, 19-2-804.
Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.

19-9-1101. Preretirement death benefits. Upon the death of an active member, the member's surviving spouse or dependent child is eligible for benefits equal to one-half of the member's final average compensation, payable as provided in 19-9-804(2). If the deceased member has completed over 20 years of membership service, the survivorship benefit must equal 2.5% of the member's final average compensation for each year of membership service.

History: En. 11-1875 by Sec. 16, Ch. 456, L. 1977; R.C.M. 1947, 11-1875; amd. Sec. 3, Ch. 186, L. 1983; amd. Sec. 4, Ch. 350, L. 1985; amd. Sec. 7, Ch. 822, L. 1991; amd. Sec. 202, Ch. 265, L. 1993; amd. Sec. 4, Ch. 620, L. 1993; Sec. 19-9-911, MCA 1991; redes. 19-9-1101 by Code Commissioner, 1993; amd. Sec. 107, Ch. 42, L. 1997; amd. Sec. 78, Ch. 562, L. 1999; amd. Sec. 107, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 near beginning of first sentence substituted "death of an active member" for "death of a member before retirement" and at end substituted "payable as provided in 19-9-804(2)" for "as provided in 19-9-804"; deleted former (2) that read: "(2) Upon the death of an inactive nonvested member, the member's surviving spouse or dependent child is eligible for a refund of the member's accumulated contributions"; and made minor changes in style. Amendment effective March 21, 2001.

19-9-1102. Payments in absence of spouse or child. If, after a member dies, a benefit is not paid pursuant to 19-9-804, 19-9-903, or 19-9-1101, then the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions minus the total of any benefits already paid from the member's account.

History: En. Sec. 2, Ch. 186, L. 1983; amd. Sec. 203, Ch. 265, L. 1993; Sec. 19-9-912, MCA 1991; redes. 19-9-1102 by Code Commissioner, 1993; amd. Sec. 79, Ch. 562, L. 1999; amd. Sec. 108, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning substituted "If, after a member dies, a benefit is not paid pursuant to 19-9-804, 19-9-903, or 19-9-1101, then the member's designated beneficiary" for "If a retired member dies without leaving a surviving spouse or dependent child and if the member had designated a beneficiary in writing to the board as provided in 19-2-801, the designated beneficiary" and near end after "any" deleted "retirement" and deleted former second sentence that read: "If the member did not designate a beneficiary or the designated beneficiary predeceased the member, the amount must be paid to the member's estate." Amendment effective March 21, 2001.

Part 12
Deferred Retirement Option Plan (DROP)

19-9-1201. Short title. This part may be cited as the deferred retirement option plan or DROP.

History: En. Sec. 1, Ch. 514, L. 2001.

Compiler's Comments

Effective Date: Section 11(2), Ch. 514, L. 2001, provided that this section is effective on passage and approval. Approved May 1, 2001.

19-9-1202. Definitions. Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) "DROP" means the deferred retirement option plan established pursuant to this part.

(2) "DROP benefit" means the lump-sum benefit calculated and distributed as provided in this part.

(3) "DROP period" means the period of time that a member irrevocably elects to participate in the DROP pursuant to 19-9-1204.

(4) "Participant" means a member of the retirement system who has elected to participate in the DROP pursuant to this part.

History: En. Sec. 2, Ch. 514, L. 2001.

Compiler's Comments

Effective Date: Section 11(2), Ch. 514, L. 2001, provided that this section is effective on passage and approval. Approved May 1, 2001.

19-9-1203. Deferred retirement option plan established — compliance with federal law — rulemaking. (1) The board shall establish a DROP for eligible members of the retirement system who elect to participate.

(2) The board shall administer the DROP in compliance with the Internal Revenue Code and the applicable rules, regulations, and determinations of the internal revenue service.

(3) The board may adopt rules to administer this part.

History: En. Sec. 3, Ch. 514, L. 2001.

Compiler's Comments

Effective Date: Section 11(2), Ch. 514, L. 2001, provided that this section is effective on passage and approval. Approved May 1, 2001.

19-9-1204. *(Effective on occurrence of contingency)* **Eligibility — participation criteria — membership status — service interruptions.** (1) Any member eligible to retire under 19-9-801(2) is eligible and may elect to participate in the DROP by filing a one-time irrevocable election with the board on a form prescribed by the board.

(2) A member electing to participate in the DROP shall participate for a minimum of 1 month and may not participate for more than 5 years.

(3) A member may participate in the DROP only once.

(4) A participant remains a member of the retirement system, but may not receive membership service or service credit in the system for the duration of the member's DROP period.

(5) If participation is interrupted by military service or disability and the participant has not received any distribution from the DROP, then the duration of the absence may not be included in calculating the DROP period.

History: En. Sec. 4, Ch. 514, L. 2001.

Compiler's Comments

Contingent Effective Date — Board to Seek Commissioner's Ruling: Section 11(1), Ch. 514, L. 2001, provided that 19-9-1204 through 19-9-1208 are effective contingent on the notification to the secretary of state that the commissioner of internal revenue has made a favorable determination pursuant to [section 9], not codified.

Section 9, Ch. 514, L. 2001, provided: "The public employees' retirement board shall, as soon as possible, request in writing a ruling from the commissioner of internal revenue as to whether the deferred retirement option plan established pursuant to [sections 1 through 8] [19-9-1201 through 19-9-1208] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code. The board shall notify the secretary of state and code commissioner when the commissioner of internal revenue has issued a favorable determination." Section 11(2), Ch. 514, L. 2001, provided that sec. 9, Ch. 514, L. 2001, is effective on passage and approval. Approved May 1, 2001.

19-9-1205. *(Effective on occurrence of contingency)* **Retirement system contributions — benefit payments to individual accounts — investment returns.** (1) During a member's participation in the DROP, state contributions under 19-9-702, employer contributions under 19-9-703, and member contributions under 19-9-710 must continue to be made to the retirement system.

(2) For each DROP participant, the board shall calculate a DROP benefit equal to the monthly benefit, including any postretirement adjustments, that would have been payable had the participant terminated employment and retired, multiplied by each month of the DROP period that the participant completes.

History: En. Sec. 5, Ch. 514, L. 2001.

Compiler's Comments

Contingent Effective Date — Board to Seek Commissioner's Ruling: Section 11(1), Ch. 514, L. 2001, provided that 19-9-1204 through 19-9-1208 are effective contingent on the notification to the secretary of state that the commissioner of internal revenue has made a favorable determination pursuant to [section 9], not codified.

Section 9, Ch. 514, L. 2001, provided: "The public employees' retirement board shall, as soon as possible, request in writing a ruling from the commissioner of internal revenue as to whether the deferred retirement option plan established pursuant to [sections 1 through 8] [19-9-1201 through 19-9-1208] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code. The board shall notify the secretary of state and code commissioner when the commissioner of internal revenue has issued a favorable determination." Section 11(2), Ch. 514, L. 2001, provided that sec. 9, Ch. 514, L. 2001, is effective on passage and approval. Approved May 1, 2001.

19-9-1206. *(Effective on occurrence of contingency)* **Survivorship benefits.** (1) If a participant dies prior to the receipt of the DROP benefit pursuant to 19-9-1208, the participant's surviving spouse or dependent child is entitled to receive a lump-sum payment equal to the participant's DROP benefit.

(2) If there is no surviving spouse or dependent child, the designated beneficiary is entitled to receive a lump-sum payment equal to the participant's DROP benefit.

(3) The benefit paid pursuant to this section must include interest reflecting the retirement system's annual investment earnings from the date the member's DROP period commenced.

History: En. Sec. 6, Ch. 514, L. 2001.

Compiler's Comments

Contingent Effective Date — Board to Seek Commissioner's Ruling: Section 11(1), Ch. 514, L. 2001, provided that 19-9-1204 through 19-9-1208 are effective contingent on the notification to the secretary of state that the commissioner of internal revenue has made a favorable determination pursuant to [section 9], not codified.

Section 9, Ch. 514, L. 2001, provided: "The public employees' retirement board shall, as soon as possible, request in writing a ruling from the commissioner of internal revenue as to whether the deferred retirement option plan established pursuant to [sections 1 through 8] [19-9-1201 through 19-9-1208] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code. The board shall notify the secretary of state and code commissioner when the commissioner of internal revenue has issued a favorable determination." Section 11(2), Ch. 514, L. 2001, provided that sec. 9, Ch. 514, L. 2001, is effective on passage and approval. Approved May 1, 2001.

19-9-1207. *(Effective on occurrence of contingency)* **Employment and benefits after DROP period.** (1) Except as otherwise provided in this section, if a member continues employment in a covered position after the DROP period ends, the board shall consider the member newly hired as of the date the DROP period ended.

(2) When a member, after the end of the DROP period, continues employment in a covered position, state contributions under 19-9-702, employer contributions under 19-9-703, and member contributions under 19-9-710 must continue to be made to the retirement system.

(3) A member who, after the end of the DROP period, continues employment in a covered position:

(a) is immediately vested for benefits accrued subsequent to the end of the DROP period; and

(b) is, upon terminating covered employment, entitled to:

(i) the member's service retirement benefit earned prior to the DROP period, including any postretirement benefit adjustment for which the member is eligible under this chapter;

(ii) a service retirement benefit based on the member's service and final average compensation during membership subsequent to the end of the DROP period, including any postretirement benefit adjustment for which the member is eligible under this chapter; and

(iii) the member's DROP benefit.

History: En. Sec. 7, Ch. 514, L. 2001.

Compiler's Comments

Contingent Effective Date — Board to Seek Commissioner's Ruling: Section 11(1), Ch. 514, L. 2001, provided that 19-9-1204 through 19-9-1208 are effective contingent on the notification to the secretary of state that the commissioner of internal revenue has made a favorable determination pursuant to [section 9], not codified.

Section 9, Ch. 514, L. 2001, provided: "The public employees' retirement board shall, as soon as possible, request in writing a ruling from the commissioner of internal revenue as to whether the deferred retirement option plan established pursuant to [sections 1 through 8] [19-9-1201 through 19-9-1208] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code. The board shall notify the secretary of state and code commissioner when the commissioner of internal revenue has issued a favorable determination." Section 11(2), Ch. 514, L. 2001, provided that sec. 9, Ch. 514, L. 2001, is effective on passage and approval. Approved May 1, 2001.

19-9-1208. *(Effective on occurrence of contingency)* **Distribution of DROP benefit.** (1) Upon termination of covered employment, a participant is entitled to:

(a) receive a lump-sum distribution of the participant's DROP benefit;

(b) roll the participant's DROP benefit into another qualified plan in a manner prescribed and authorized by the board; or

(c) any other distribution or method of payment of the DROP benefit approved by the board.

(2) A distribution pursuant to this section is subject to the provisions of 19-2-907 and 19-2-909 and all other applicable provisions of Title 19.

(3) The amount of a distribution, rollover, transfer, or other payment of a DROP benefit pursuant to this section must include interest reflecting the retirement system's annual investment earnings from the date the member's DROP period commenced.

History: En. Sec. 8, Ch. 514, L. 2001.

Compiler's Comments

Contingent Effective Date — Board to Seek Commissioner's Ruling: Section 11(1), Ch. 514, L. 2001, provided that 19-9-1204 through 19-9-1208 are effective contingent on the notification to the secretary of state that the commissioner of internal revenue has made a favorable determination pursuant to [section 9], not codified.

Section 9, Ch. 514, L. 2001, provided: "The public employees' retirement board shall, as soon as possible, request in writing a ruling from the commissioner of internal revenue as to whether the deferred retirement option plan established pursuant to [sections 1 through 8] [19-9-1201 through 19-9-1208] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code. The board shall notify the secretary of state and code commissioner when the commissioner of internal revenue has issued a favorable determination." Section 11(2), Ch. 514, L. 2001, provided that sec. 9, Ch. 514, L. 2001, is effective on passage and approval. Approved May 1, 2001.

CHAPTER 10

POLICE RETIREMENT — LOCAL FUNDS
(Renumbered by Code Commissioner, 1993)

Chapter Compiler's Comments

Sections Renumbered:

19-10-101.	Renumbered 19-19-101.
19-10-201.	Renumbered 19-19-201.
19-10-202.	Renumbered 19-19-202.
19-10-203.	Renumbered 19-19-203.
19-10-204.	Renumbered 19-19-204.
19-10-205.	Renumbered 19-19-205.
19-10-301.	Renumbered 19-19-301.
19-10-302.	Renumbered 19-19-302.
19-10-303.	Renumbered 19-19-303.
19-10-304.	Renumbered 19-19-304.
19-10-305.	Renumbered 19-19-305.
19-10-401.	Renumbered 19-19-401.
19-10-402.	Renumbered 19-19-402.
19-10-403.	Renumbered 19-19-403.
19-10-404.	Renumbered 19-19-404.
19-10-405.	Renumbered 19-19-405.
19-10-406.	Renumbered 19-19-406.
19-10-501.	Renumbered 19-19-501.
19-10-502.	Renumbered 19-19-502.
19-10-503.	Renumbered 19-19-503.
19-10-504.	Renumbered 19-19-504.
19-10-505.	Renumbered 19-19-505.
19-10-506.	Renumbered 19-19-506.

CHAPTER 11

FIREFIGHTERS' RETIREMENT
(Renumbered and Repealed)

Chapter Compiler's Comments

Sections Renumbered and Repealed:

19-11-101.	Renumbered 19-18-101 by Code Commissioner, 1993.
19-11-102.	Renumbered 19-18-102 by Code Commissioner, 1993.
19-11-103.	Renumbered 19-18-103 by Code Commissioner, 1993.
19-11-104.	Renumbered 19-18-104 by Code Commissioner, 1993.
19-11-105.	Renumbered 19-18-105 by Code Commissioner, 1993.
19-11-106.	Renumbered 19-18-106 by Code Commissioner, 1993.
19-11-107.	Renumbered 19-18-107 by Code Commissioner, 1993.
19-11-201.	Renumbered 19-18-201 by Code Commissioner, 1993.
19-11-202.	Renumbered 19-18-202 by Code Commissioner, 1993.
19-11-203.	Renumbered 19-18-203 by Code Commissioner, 1993.
19-11-204.	Renumbered 19-18-204 by Code Commissioner, 1993.
19-11-205.	Renumbered 19-18-205 by Code Commissioner, 1993.
19-11-206.	Renumbered 19-18-206 by Code Commissioner, 1993.
19-11-207.	Renumbered 19-18-207 by Code Commissioner, 1993.
19-11-208.	Renumbered 19-18-208 by Code Commissioner, 1993.
19-11-301.	Repealed. Sec. 62, Ch. 566, L. 1981.
19-11-302.	Repealed. Sec. 62, Ch. 566, L. 1981.
19-11-303.	Repealed. Sec. 62, Ch. 566, L. 1981.

19-11-401. Renumbered 19-18-401 by Code Commissioner, 1993.
19-11-402. Renumbered 19-18-402 by Code Commissioner, 1993.
19-11-403. Renumbered 19-18-403 by Code Commissioner, 1993.
19-11-501. Renumbered 19-18-501 by Code Commissioner, 1993.
19-11-502. Renumbered 19-18-502 by Code Commissioner, 1993.
19-11-503. Renumbered 19-18-503 by Code Commissioner, 1993.
19-11-504. Renumbered 19-18-504 by Code Commissioner, 1993.
19-11-505 through 19-11-510 reserved.
19-11-511. Renumbered 19-18-511 by Code Commissioner, 1993.
19-11-512. Renumbered 19-18-512 by Code Commissioner, 1993.
19-11-513. Renumbered 19-18-513 by Code Commissioner, 1993.
19-11-514. Renumbered 19-18-514 by Code Commissioner, 1993.
19-11-601. Renumbered 19-18-601 by Code Commissioner, 1993.
19-11-602. Renumbered 19-18-602 by Code Commissioner, 1993.
19-11-603. Renumbered 19-18-603 by Code Commissioner, 1993.
19-11-604. Renumbered 19-18-604 by Code Commissioner, 1993.
19-11-605. Renumbered 19-18-605 by Code Commissioner, 1993.
19-11-606. Renumbered 19-18-606 by Code Commissioner, 1993.
19-11-607. Renumbered 19-18-607 by Code Commissioner, 1993.
19-11-608 through 19-11-610 reserved.
19-11-611. Renumbered 19-18-611 by Code Commissioner, 1993.
19-11-612. Renumbered 19-18-612 by Code Commissioner, 1993.

Histories of Repealed Sections:

19-11-301. En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(3)(a); amd. Sec. 1, Ch. 270, L. 1981.

19-11-302. En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(3)(c).

19-11-303. En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(3)(b); amd. Sec. 7, Ch. 274, L. 1981.

CHAPTER 12

VOLUNTEER FIREFIGHTERS' COMPENSATION ACT

(Renumbered by Code Commissioner, 1993)

Chapter Compiler's Comments

Sections Renumbered:

19-12-101. Renumbered 19-17-101.
19-12-102. Renumbered 19-17-102.
19-12-103. Renumbered 19-17-103.
19-12-104. Renumbered 19-17-104.
19-12-105. Renumbered 19-17-105.
19-12-201. Renumbered 19-17-201.
19-12-202. Renumbered 19-17-202.
19-12-203. Renumbered 19-17-203.
19-12-204. Renumbered 19-17-204.
19-12-301. Renumbered 19-17-301.
19-12-302. Renumbered 19-17-302.
19-12-401. Renumbered 19-17-401.
19-12-402. Renumbered 19-17-402.
19-12-403. Renumbered 19-17-403.
19-12-404. Renumbered 19-17-404.
19-12-405. Renumbered 19-17-405.
19-12-406. Renumbered 19-17-406.
19-12-407. Renumbered 19-17-407.
19-12-408. Renumbered 19-17-408.
19-12-409. Renumbered 19-17-409.
19-12-501. Renumbered 19-17-501.
19-12-502. Renumbered 19-17-502.
19-12-503. Renumbered 19-17-503.

19-12-504. Renumbered 19-17-504.
19-12-505. Renumbered 19-17-505.
19-12-506. Renumbered 19-17-506.

CHAPTER 13

FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM

Part 1 — General Provisions

19-13-101. Short title.
19-13-102. Purpose — application of prior law.
19-13-103. Firefighters' unified retirement system established.
19-13-104. Definitions.
19-13-105. Renumbered 19-13-210 by Code Commissioner, 1993.
19-13-106. Repealed.
19-13-107. Renumbered 19-13-310 by Code Commissioner, 1993.
19-13-108. Renumbered 19-13-211 by Code Commissioner, 1993.
19-13-109. Repealed.
19-13-110. Renumbered 19-13-212 by Code Commissioner, 1993.
19-13-111 through 19-13-114 reserved.
19-13-115. Firemen's association to advise board.

Part 2 — Extension of Coverage by Local Government Employers

19-13-201. Renumbered 19-13-115 by Code Commissioner, 1993.
19-13-202. Repealed.
19-13-203. Repealed.
19-13-204. Repealed.
19-13-205. Terminated.
19-13-206 through 19-13-209 reserved.
19-13-210. Participation in retirement system by first- and second-class cities.
19-13-211. Election to join retirement system — transfer of assets.
19-13-212. Termination of participation in retirement system or reduction of employer contributions.
19-13-213. Excess unfunded liabilities of prior plans.
19-13-214. Taxing authority of employers.

Part 3 — Eligibility, Membership, and Vesting

19-13-301. Active membership — inactive vested member — inactive nonvested member.
19-13-302. Ineligibility for other retirement plans.
19-13-303. Repealed.
19-13-304. Repealed.
19-13-305. Repealed.
19-13-306 through 19-13-309 reserved.
19-13-310. Effect on members of prior plans.

Part 4 — Service Credit

19-13-401. Repealed.
19-13-402. Repealed.
19-13-403. Application to purchase military service.
19-13-404. Purchase of other Montana public service.
19-13-405. Application to purchase additional service.
19-13-406. Service purchase limitation.

Part 5 — Retirement Account—Creation and Management (Renumbered and Repealed)

Part 6 — Contributions and Refunds

19-13-601. Deduction remitted to firemen's association — member's contribution.
19-13-602. Repealed.
19-13-603. Repealed.
19-13-604. State contribution.
19-13-605. Employer contribution.
19-13-606. Renumbered 19-13-214 by Code Commissioner, 1993.
19-13-607. Other money credited as employer contributions.
19-13-608. Repealed.
19-13-609. Repealed.

19-13-610 through 19-13-614 reserved.
19-13-615. Repealed.

Part 7 — Service Retirement Benefits

19-13-701. Eligibility for service retirement.
19-13-702. Repealed.
19-13-703. Repealed.
19-13-704. Amount of service retirement benefit.

Part 8 — Disability Retirement Benefits

19-13-801. Repealed.
19-13-802. Eligibility for disability retirement.
19-13-803. Amount of disability retirement benefit.
19-13-804. Medical examination of disability retiree — cancellation of benefit.
19-13-805. Reinstatement upon termination of benefit.

Part 9 — Survivorship Benefits and Death Payments

19-13-901. Repealed.
19-13-902. Survivorship benefit.
19-13-903. Payments to designated beneficiary.

Part 10 — Postretirement Benefits and Benefit Increases

19-13-1001 through 19-13-1005. Repealed.
19-13-1006. Repealed.
19-13-1007. Minimum benefit adjustment.
19-13-1008. Repealed.
19-13-1009. Repealed.
19-13-1010. Guaranteed annual benefit adjustment.
19-13-1011. Election — guaranteed annual benefit adjustment.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Municipal fire departments, Title 7, ch. 33, part 41.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
The Public Employees' Retirement Act — general provisions, Title 19, ch. 2.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.

Part 1
General Provisions

19-13-101. Short title. This chapter may be cited as the "Montana Firefighters' Unified Retirement Act".

History: En. Sec. 1, Ch. 566, L. 1981.

Cross-References

Public Employees' Retirement Board — administration, Title 19, ch. 2, part 4.

19-13-102. Purpose — application of prior law. (1) Because cities other than those of the first or second class currently have fire department relief associations, the legislature finds and declares that the law regarding these associations cannot be repealed. It is the express intention of the legislature to allow two separate and distinct retirement systems to exist. The first, which includes fire department relief associations, applies to cities other than those of the first or second class that wish to adopt it. The second, created by this chapter, applies to cities of the first or second class and those other cities that wish to adopt it. The purpose of the second system is to provide equity and security for retired firefighters who served cities of the first and second class and other cities electing to join the plan by creating a centrally administered system responsible for continuing all retirement payments from the assets of the system.

(2) Title 19, chapter 18, may not be applied in any way to a city operating under the plan created by this chapter except as otherwise provided.

History: En. Sec. 2, Ch. 566, L. 1981.

Cross-References

Firefighters' retirement, Title 19, ch. 18.

19-13-103. Firefighters' unified retirement system established. A retirement plan is established and known as the firefighters' unified retirement system. The plan is governed by the provisions of chapter 2 and this chapter.

History: En. Sec. 3, Ch. 566, L. 1981; amd. Sec. 205, Ch. 265, L. 1993; amd. Sec. 80, Ch. 562, L. 1999.

19-13-104. *(Temporary)* **Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(2) "Compensation" means:

(a) for a full-paid firefighter, the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid for the firefighter's service as a firefighter out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code have been made;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under age 18; or

(b) unmarried, under age 24, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means any city that is of the first or second class or that elects to join this retirement system under 19-13-211.

(5) "Final average compensation" means the monthly compensation of a member averaged over the last 36 months of the member's active service or, if the member has not been a member that long, over the period of the member's service. Lump-sum payments for annual leave paid to the member upon termination of service may be used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of final average compensation.

(6) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(7) "Full-paid firefighter" means a person appointed as a firefighter under 7-33-4106.

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 5 or more years of membership service.

(9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of $300 a year for service as a firefighter.

(10) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

(11) "Retirement date" means the date on which the first payment of benefits is payable.

(12) "Surviving spouse" means the spouse married to a member at the time of the member's death.

19-13-104. *(Effective on occurrence of contingency)* **Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(2) "Compensation" means:

(a) for a full-paid firefighter, the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid for the firefighter's service as a firefighter out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code have been made;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under 18 years of age; or

(b) unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means any city that is of the first or second class or that elects to join this retirement system under 19-13-211 or, with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department of military affairs established in 2-15-1201.

(5) "Final average compensation" means the monthly compensation of a member averaged over the last 36 months of the member's active service or, if the member has not been a member that long, over the period of the member's service. Lump-sum payments for annual leave paid to the member upon termination of service may be used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of final average compensation.

(6) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(7) "Full-paid firefighter" means a person appointed as a firefighter under 7-33-4106.

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 5 or more years of membership service.

(9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of $300 a year for service as a firefighter.

(10) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

(11) "Retirement date" means the date on which the first payment of benefits is payable.

(12) "Retirement system" means the firefighters' unified retirement system provided for in this chapter.

(13) "Surviving spouse" means the spouse married to a member at the time of the member's death.

History: En. Sec. 4, Ch. 566, L. 1981; amd. Sec. 5, Ch. 186, L. 1983; amd. Sec. 21, Ch. 282, L. 1983; amd. Sec. 1, Ch. 585, L. 1983; amd. Sec. 206, Ch. 265, L. 1993; amd. Sec. 1, Ch. 457, L. 1997; amd. Sec. 40, Ch. 58, L. 1999; amd. Sec. 81, Ch. 562, L. 1999; amd. Sec. 1, Ch. 290, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 290 in definition of employer after "19-13-211" inserted "or, with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department of military affairs established in 2-15-1201"; inserted definition of retirement system; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7, Ch. 290, L. 2001, provided: "[This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana air national guard pursuant to [section 2] [19-13-210] will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board. The board shall notify the secretary of state and the code commissioner when this contingency is met."

19-13-105. Renumbered 19-13-210 by Code Commissioner, 1993.

19-13-106. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 6, Ch. 566, L. 1981.

19-13-107. Renumbered 19-13-310 by Code Commissioner, 1993.

19-13-108. Renumbered 19-13-211 by Code Commissioner, 1993.

19-13-109. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 9, Ch. 566, L. 1981.

19-13-110. Renumbered 19-13-212 by Code Commissioner, 1993.

19-13-111 through 19-13-114 reserved.

19-13-115. Firemen's association to advise board. The Montana state firemen's association shall serve as an advisor to the board and may meet quarterly with the board to discuss matters relating to the administration of this chapter. The association may review all medical and legal information available to the board relating to service, disability, and survivorship benefits of an individual member upon a written release of the member or the member's survivor.
History: En. Sec. 10, Ch. 566, L. 1981; amd. Sec. 207, Ch. 265, L. 1993; Sec. 19-13-201, MCA 1991; redes. 19-13-115 by Code Commissioner, 1993.

Part 2

Extension of Coverage by Local Government Employers

Part Cross-References

The Public Employees' Retirement Act — general provisions — administration of retirement systems, Title 19, ch. 2, part 4.

Teachers' retirement — administration of system, Title 19, ch. 20, part 2.

19-13-201. Renumbered 19-13-115 by Code Commissioner, 1993.

19-13-202. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 11, Ch. 566, L. 1981.

19-13-203. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 12, Ch. 566, L. 1981.

19-13-204. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 13, Ch. 566, L. 1981; amd. Sec. 22, Ch. 282, L. 1983.

19-13-205. Terminated. Sec. 7, Ch. 328, L. 1987.
History: En. Sec. 3, Ch. 328, L. 1987.

19-13-206 through 19-13-209 reserved.

19-13-210. *(Temporary)* **Participation in retirement system by first- and second-class cities.** Cities of the first and second class that employ full-paid firefighters shall participate in the retirement system. If a city of the first or second class is reduced to a city of the third class or a town under 7-1-4118, it shall continue to participate in the retirement system as long as it has retired firefighters or survivors eligible to receive retirement benefits.

19-13-210. *(Effective on occurrence of contingency)* **Participation in retirement system.** (1) Cities of the first and second class that employ full-paid firefighters shall participate in the retirement system. If a city of the first or second class is reduced to a city of the third class or a town under 7-1-4118, it shall continue to participate in the retirement system as long as it has retired firefighters or survivors eligible to receive retirement benefits.

(2) Firefighters hired by the Montana air national guard on or after October 1, 2001, or on or after the date of the execution of an agreement between the department of military affairs and the board, whichever is later, shall participate in the retirement system.

History: En. Sec. 5, Ch. 566, L. 1981; amd. Sec. 208, Ch. 265, L. 1993; Sec. 19-13-105, MCA 1991; redes. 19-13-210 by Code Commissioner, 1993; amd. Sec. 2, Ch. 290, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 290 inserted (2) requiring firefighters hired by Montana air national guard on or after October 1, 2001, or on or after date of contingency regarding execution of required agreement regarding payment of contributions with federal funds, whichever is later, to participate in retirement system; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7, Ch. 290, L. 2001, provided: "[This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana air national guard pursuant to [section 2] [19-13-210] will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board. The board shall notify the secretary of state and the code commissioner when this contingency is met."

Cross-References

Classification of municipalities, 7-1-4111.

Municipal fire departments, Title 7, ch. 33, part 41.

19-13-211. Election to join retirement system — transfer of assets. (1) Except for cities with only volunteer firefighters, a city other than one described in 19-13-210 may, after July 1, 1981, elect to join the retirement system by passing an ordinance stating the election and the consent of the city to be bound by the provisions of this retirement system. The fire department relief association of the city may pass a resolution to the same effect. Upon the enactment of the ordinance and passage of the resolution, the provisions of this retirement system become applicable to the city. Any city that enacts an election ordinance and in which the fire department relief association passes a resolution shall send certified copies to the board and shall, as soon as possible, deposit into the pension trust fund all cash and securities held by its fire department relief association. The value of the securities must be determined by the board.

(2) The board of trustees of the fire department relief association as of the effective date of the election shall certify the proportion, if any, of the funds of the association that represents the accumulated contributions of the active members and the relative shares of the members as of that date. Following the transfer of the cash and securities required by subsection (1) and the certification required by this subsection, the fire department relief association may conclude its affairs. The shares of the members must be charged to the employer and credited to the respective members in the retirement system and administered as if the contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section must be offset, with interest, against future required employer contributions. Any excess of employer charges over credits under this section are payable by the employer, with interest, on a basis determined by the procedure described in 19-13-213.

History: En. Sec. 8, Ch. 566, L. 1981; amd. Sec. 209, Ch. 265, L. 1993; Sec. 19-13-108, MCA 1991; redes. 19-13-211 by Code Commissioner, 1993.

19-13-212. *(Temporary)* **Termination of participation in retirement system or reduction of employer contributions.** (1) If a city voluntarily terminates its contributions in the retirement system or significantly reduces the number of full-paid firefighters it employs to a degree that, in the board's opinion, inadequately funds the accrued or accruing benefits of retirement system members, the board shall request as part of the required actuarial valuation an actuarial investigation of the funding status of the city.

(2) Based on the actuarial investigation, the board may request and the city shall pay annually the amount determined to be necessary to provide adequate funding for the liabilities

of the city. This amount must be in addition to any other contributions required by the retirement act.

(3) Six years after the actuarial investigation is conducted, a city making payments as provided in subsection (2) may request the board to review the city's funding status relative to the annual payments. As a result of the review, the board may adjust the payments.

19-13-212. *(Effective on occurrence of contingency)* **Termination of participation in retirement system or reduction of employer contributions.** (1) If an employer voluntarily terminates its contributions in the retirement system or significantly reduces the number of full-paid firefighters it employs to a degree that, in the board's opinion, inadequately funds the accrued or accruing benefits of retirement system members, the board shall request as part of the required actuarial valuation an actuarial investigation of the funding status of the employer.

(2) Based on the actuarial investigation, the board may request and the employer shall pay annually the amount determined to be necessary to provide adequate funding for the liabilities of the employer. This amount must be in addition to any other contributions required by the retirement act.

(3) Six years after the actuarial investigation is conducted, an employer making payments as provided in subsection (2) may request the board to review the employer's funding status relative to the annual payments. As a result of the review, the board may adjust the payments.

History: En. Sec. 1, Ch. 468, L. 1983; amd. Sec. 210, Ch. 265, L. 1993; Sec. 19-13-110, MCA 1991; redes. 19-13-212 by Code Commissioner, 1993; amd. Sec. 3, Ch. 290, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 290 throughout section substituted reference to employer for reference to city. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7, Ch. 290, L. 2001, provided: "[This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana air national guard pursuant to [section 2] [19-13-210] will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board. The board shall notify the secretary of state and the code commissioner when this contingency is met."

19-13-213. Excess unfunded liabilities of prior plans. (1) The legislature finds and declares that many cities operating under prior plans have excess and unfunded liabilities, and the liabilities cannot be amortized by the percentage contributions set forth in this chapter.

(2) The board shall, within 6 months after a city is granted membership in the retirement system, determine the excess and unfunded liability of the city's previous plan. If the board determines that the city has an excess and unfunded liability under a previous plan that is not funded by sums on deposit or funds available for deposit in the pension trust fund, the city shall pay an additional sum over a period of time to amortize the city's excess liability.

History: En. Sec. 24, Ch. 566, L. 1981; amd. Sec. 3, Ch. 286, L. 1983; amd. Sec. 5, Ch. 661, L. 1983; amd. Sec. 1, Ch. 44, L. 1991; amd. Sec. 211, Ch. 265, L. 1993; Sec. 19-13-503, MCA 1991; redes. 19-13-213 by Code Commissioner, 1993.

19-13-214. Taxing authority of employers. For the purpose of making contributions required of a city under this chapter, the appropriate authority of the city may, subject to 15-10-420, levy a tax that along with other revenue available for that purpose is sufficient to meet the demand.

History: En. Sec. 32, Ch. 566, L. 1981; Sec. 19-13-606, MCA 1991; redes. 19-13-214 by Code Commissioner, 1993; amd. Sec. 111, Ch. 574, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 574 near middle after "chapter" substituted "the appropriate authority of the city may, subject to 15-10-420, levy a tax that along with other revenue" for "whenever the demand for deposits of such contributions cannot be met within the general taxing authority and other revenues available to the city for that purpose, the appropriate authority of the city may levy any additional tax authorized by law until the general taxing authority and other revenue"; deleted former (2) and (3) that read: "(2) "General taxing authority", as used in this section, means that levy which the city may make under the all-purpose levy or under multiple-purpose levies, if the city is using multiple-purpose levies.

(3) No provision of any statute relating to the all-purpose levy may be so construed as to limit the additional taxing authority created by this section"; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Police retirement — statewide plan — taxing authority of employers, 19-9-209.
Firefighters' retirement — special tax levy for fund required, 19-18-503.

Part 3
Eligibility, Membership, and Vesting

Part Cross-References

The Public Employees' Retirement Act — general provisions — termination of membership and refunds, Title 19, ch. 2. part 6.
PERS — membership, Title 19, ch. 3, part 4.
Judges' retirement — membership, Title 19, ch. 5, part 3.
Highway patrol retirement — membership, Title 19, ch. 6, part 3.
Sheriffs' retirement — membership, Title 19, ch. 7, part 3.
Game wardens' and peace officers' retirement — membership, Title 19, ch. 8, part 3.
Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.
Teachers' retirement — membership, Title 19, ch. 20, part 3.

19-13-301. Active membership — inactive vested member — inactive nonvested member. (1) Except as provided in subsection (7), a full-paid firefighter becomes an active member of the retirement system:

(a) on the first day of the firefighter's service with an employer;

(b) on July 1, 1981, if the firefighter is employed by an employer on that date; or

(c) in the case of an employer who elects to join the retirement system, as provided in 19-13-211, on the effective date of the election if the firefighter is employed by the employer on that date.

(2) Upon becoming eligible for membership, the firefighter shall complete the forms and furnish any proof required by the board.

(3) A part-paid firefighter may elect to become a member of the retirement system by filing a membership application with the board within 6 months of becoming a part-paid firefighter or March 21, 2001, whichever is later.

(4) An active member becomes an inactive member upon the occurrence of the earliest of the following:

(a) the date on which the member ceases service with an employer;

(b) the 31st day of an approved absence from active duty with an employer; or

(c) the date on which the member ceases to be employed because of a reduction of the number of firefighters in the fire department as provided in 7-33-4125.

(5) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(6) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(7) (a) A firefighter previously employed in a position covered under the public employees' retirement system and who is first hired into a position covered under the firefighters' unified retirement system after attaining 45 years of age may elect to remain in the public employees' retirement system.

(b) A firefighter making an election to remain in the public employees' retirement system shall make the election in a manner prescribed by the board within 30 days of being hired into the position otherwise covered under the firefighters' unified retirement system.

History: En. Sec. 14, Ch. 566, L. 1981; amd. Sec. 212, Ch. 265, L. 1993; amd. Secs. 1, 2, Ch. 254, L. 1997; amd. Sec. 2, Ch. 457, L. 1997; amd. Sec. 109, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at end of (3) after "board" inserted "within 6 months of becoming a part-paid firefighter or March 21, 2001, whichever is later"; in (7)(b) near middle after "within" substituted "30 days" for "1 month"; and made minor changes in style. Amendment effective March 21, 2001.

19-13-302. Ineligibility for other retirement plans. An active member is not eligible to be covered under any other mandatory retirement plan to which an employer is required to contribute on the member's behalf while the member is eligible to be covered by this retirement system.

History: En. Sec. 15, Ch. 566, L. 1981; amd. Sec. 4, Ch. 661, L. 1983; amd. Sec. 213, Ch. 265, L. 1993.

Cross-References

Legislators — continued participation, 5-2-304.

Sheriffs' retirement — ineligibility for membership in public employees' retirement system, 19-7-302.

Game wardens' and peace officers' retirement — ineligibility for membership in public employees' retirement system — transfer of membership, 19-8-302.

Police retirement — statewide plan — ineligibility for other retirement plans, 19-9-302.

Volunteer Firefighters' Compensation Act, Title 19, ch. 17.

Firefighters' retirement, Title 19, ch. 18.

19-13-303. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 16, Ch. 566, L. 1981.

19-13-304. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 17, Ch. 566, L. 1981; amd. Sec. 2, Ch. 191, L. 1987.

19-13-305. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 18, Ch. 566, L. 1981.

19-13-306 through 19-13-309 reserved.

19-13-310. Effect on members of prior plans. A firefighter hired before July 1, 1981, who was a member of a prior plan and who becomes a member of this retirement system retains all rights and benefits accrued under a prior plan.

History: En. Sec. 7, Ch. 566, L. 1981; amd. Sec. 214, Ch. 265, L. 1993; Sec. 19-13-107, MCA 1991; redes. 19-13-310 by Code Commissioner, 1993.

Cross-References

Firefighters' rights in event of city-county consolidation, 7-33-4131.

Retention of firefighters' rights when local government consolidated, 19-18-107.

Part 4
Service Credit

Part Cross-References

PERS — service credit and additional contributions, Title 19, ch. 2, part 7.

19-13-401. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 19, Ch. 566, L. 1981.

19-13-402. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 20, Ch. 566, L. 1981.

19-13-403. Application to purchase military service. (1) (a) Except as otherwise provided in this section and subject to 19-13-406, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active duty service in the armed forces of the United States for the purpose of calculating retirement benefits.

(b) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation.

(2) A member may not purchase more military service than the member's years of membership service in excess of 15 years.(3) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

(4) Military service purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit.

History: En. Sec. 21, Ch. 566, L. 1981; amd. Sec. 220, Ch. 265, L. 1993; amd. Sec. 41, Ch. 58, L. 1999; amd. Sec. 110, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning of (1)(a) inserted exception clause, after "member with" substituted "at least 15 years of service" for "15 years or more service", near middle after "retirement" substituted "file a written application with the board to purchase up to 5 years" for "make a written election with the board to qualify all or any portion", and at end after "benefits" deleted "up to a maximum of 5 years, if the member is not otherwise eligible to receive credit for this service under 19-2-707"; at beginning of (1)(b) substituted "To purchase this military service, the member shall pay the actuarial cost of the service" for "To qualify this service the member shall contribute to the pension trust fund the actuarial cost of granting the service to be determined by the board"; near beginning of (2) after "may not" substituted "purchase more military service than the member's years of membership service" for "qualify more of the member's military service than the member has service credit" and deleted former second sentence that read: "Military service purchased under this section may not be used in determining the member's eligibility for a service retirement"; substituted (3) regarding ineligibility to purchase military service for former language that read: "If a member has retired from active duty in the armed forces of the United States with military retirement benefits, the member may not qualify military service under subsection (1)"; inserted (4) establishing that purchased military service is not membership service; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Veteran defined, 10-2-101.
Reemployment of public employee upon completion of military service, 10-2-221.
PERS — election to qualify military service, 19-3-503.
Highway patrol retirement — election to qualify military service, 19-6-801.
Sheriffs' retirement — election to qualify previous military service, 19-7-803.
Game wardens' and peace officers' retirement — election to qualify military service, 19-8-901.
Police retirement — statewide plan — election to qualify previous military service, 19-9-403.
Police retirement — local funds — election to qualify previous military service, 19-19-406.
Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-20-404.

19-13-404. Purchase of other Montana public service. (1) (a) A member may, at any time before retirement, file a written application with the board to purchase all or any portion of the member's service credit in the public employees', highway patrol officers', sheriffs', municipal police officers', or game wardens' and peace officers' retirement system to the extent that the member either has received or is eligible to receive a refund of the member's accumulated contributions.

(b) To purchase this service, the member shall pay the actuarial cost of the service in the firefighters' unified retirement system, as determined by the board, based on the system's most recent actuarial valuation minus the employer contribution provided in subsection (1)(c).

(c) Upon receiving the member's payment under subsection (1)(b), the board shall transfer from the member's former retirement system to the firefighters' unified retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the firefighters' unified retirement system, according to the most recent actuarial valuation, based on the compensation earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, file a written application with the board to purchase all or a portion of full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and employment documentation certified by the member's public employer. The board shall grant service credit subject to the board's rules. To purchase service under this section, the employee shall pay the actuarial cost of the service in the firefighters' unified retirement system, based on the system's most recent actuarial valuation.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

History: En. Sec. 6, Ch. 331, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 221, Ch. 265, L. 1993; amd. Sec. 24, Ch. 412, L. 1995; amd. Sec. 12, Ch. 223, L. 1997; amd. Sec. 82, Ch. 562, L. 1999; amd. Sec. 111, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 near beginning of (1)(a) after "retirement" substituted "file a written application with the board to purchase" for "make a written election with the board to qualify"; at beginning of (1)(b) substituted "To purchase this service, the member shall pay the actuarial cost of the service" for "To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service"; in (2)(a) near beginning of first sentence after "retirement" substituted "file a written application with the board to purchase all or a portion of" for "make a written election with the board to qualify any" and at beginning of fourth sentence substituted "To purchase service under this section, the employee shall pay the actuarial cost of the service" for "upon contribution by the employee of the actuarial cost of granting this service" and after "retirement system" deleted "as determined by the board"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

PERS — qualification of other Montana public service, 19-3-509.
Highway patrol retirement — qualification of other Montana public service, 19-6-802.
Sheriffs' retirement — qualification of other Montana public service, 19-7-802.
Game wardens' and peace officers' retirement — qualification of other Montana public service, 19-8-902.
Police retirement — statewide plan — qualification of other Montana public service, 19-9-405.

19-13-405. Application to purchase additional service. (1) Subject to 19-13-406, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase service under this section, a member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation as determined by the board.

(3) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement.

History: En. Sec. 5, Ch. 180, L. 1995; amd. Sec. 42, Ch. 58, L. 1999; amd. Sec. 112, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning of (1) substituted "Subject to 19-13-406, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase" for "At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase" and at end after "service" deleted "that the member has qualified under the retirement system"; at beginning of (2) substituted "To purchase service under this section, a member shall pay the actuarial cost of the service" for "For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service"; deleted former (3) that read: "(3) A member may elect to qualify no more than a combined total of 5 years of service under 19-2-707, 19-13-403, and this section"; and made minor changes in style. Amendment effective March 21, 2001.

19-13-406. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service under 19-13-403 and 19-13-405.

History: En. Sec. 113, Ch. 99, L. 2001.

Compiler's Comments

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

Part 5
Retirement Account — Creation and Management (Renumbered and Repealed)

Part Compiler's Comments

Sections Renumbered and Repealed:

19-13-501. Repealed. Sec. 236, Ch. 265, L. 1993.
19-13-502. Repealed. Sec. 236, Ch. 265, L. 1993.
19-13-503. Renumbered 19-13-213 by Code Commissioner, 1993.
19-13-504. Repealed. Sec. 236, Ch. 265, L. 1993.
19-13-505. Repealed. Sec. 236, Ch. 265, L. 1993.
19-13-506. Renumbered 19-13-615 by Code Commissioner, 1993.

Histories of Repealed Sections:

19-13-501. En. Sec. 22, Ch. 566, L. 1981; amd. Sec. 23, Ch. 282, L. 1983.
19-13-502. En. Sec. 23, Ch. 566, L. 1981.
19-13-504. En. Sec. 25, Ch. 566, L. 1981.
19-13-505. En. Sec. 26, Ch. 566, L. 1981.

Part 6
Contributions and Refunds

Part Cross-References

Management and investment of pension trust funds, Title 19, ch. 2, part 5.
PERS — contributions, Title 19, ch. 3, part 3.
Judges' retirement — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.

Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-13-601. Deduction remitted to firemen's association — member's contribution. (1) Each employer shall retain from the compensation of each active member a sum equal to 1% of the member's compensation for services as a firefighter and shall remit this amount on a monthly basis to the Montana state firemen's association for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the retirement system.

(2) Each member's contribution to the retirement system as a percentage of the member's compensation must be:

(a) 9.5% for a member not covered under 19-13-1010; or

(b) 10.7% for a member covered under 19-13-1010.

(3) If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received must be included as part of the member's compensation for purposes of determining contributions and service credits under the retirement system. Contributions made under 19-13-604, 19-13-605, and this section must be based on the total compensation received by the member from the employer and from workers' compensation during the period of disability.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, as amended and applicable on July 1, 1987, shall pick up and pay the contributions that would be payable by the member under subsection (2) for service rendered after June 30, 1987.

(5) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's compensation as defined in 19-13-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. Sec. 27, Ch. 566, L. 1981; (2)En. Sec. 1, Ch. 289, L. 1983; amd. Sec. 1, Ch. 191, L. 1987; amd. Sec. 58, Ch. 613, L. 1989; amd. Sec. 216, Ch. 265, L. 1993; amd. Sec. 1, Ch. 541, L. 1995; amd. Secs. 3, 12, Ch. 457, L. 1997.

Cross-References

Police protective association — contributions for group life insurance and representation, 7-32-4122, 7-32-4123.
Refund of contributions on termination of service, 19-2-602.
Reinstatement after withdrawal of contributions, 19-2-603.
Purchase of service credits allowed, 19-2-704.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Employer to furnish itemized statement of deductions, 39-3-101.

19-13-602. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 28, Ch. 566, L. 1981.

19-13-603. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 29, Ch. 566, L. 1981; amd. Sec. 5, Ch. 103, L. 1987.

19-13-604. State contribution. The state shall make its contributions from the general fund. The general fund contributions must be made annually after the end of each fiscal year but no later than November 1. The board shall notify the state auditor by September 1 of each fiscal year of the annual compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid to all active members during the preceding fiscal year. The state's contribution is 32.61% of this total compensation. The contributions are statutorily appropriated, as provided in 17-7-502.

History: En. Sec. 30, Ch. 566, L. 1981; amd. Sec. 6, Ch. 661, L. 1983; amd. Sec. 29, Ch. 703, L. 1985; amd. Sec. 1, Ch. 617, L. 1991; amd. Sec. 217, Ch. 265, L. 1993; amd. Sec. 2, Ch. 541, L. 1995; amd. Secs. 4, 8(4)(b), Ch. 445, L. 1997; amd. Sec. 25, Ch. 532, L. 1997; amd. Sec. 83, Ch. 562, L. 1999; amd. Sec. 114, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning of second sentence substituted "The general fund contributions must be made annually" for "Payments must be made annually from the general fund to the pension trust fund" and in third sentence after "auditor" inserted "by September 1 of each fiscal year" and at end substituted "preceding fiscal year" for "preceding year"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

State Auditor, 2-15-601.
Insurance premium tax, 33-2-705.

19-13-605. *(Temporary)* **Employer contribution.** Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official from money available to the city for this purpose. The employer's contribution is 14.36% of the total compensation paid to members. All contributions are payable monthly to the board, which shall, as soon as practicable after their receipt, deposit them in the pension trust fund.

19-13-605. *(Effective on occurrence of contingency)* **Employer contribution.** Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official from money available for this purpose. The employer's contribution is 14.36% of the total compensation paid to members. All contributions are payable monthly to the board, which shall, as soon as practicable after their receipt, deposit them in the pension trust fund.

History: En. Sec. 31, Ch. 566, L. 1981; amd. Sec. 7, Ch. 661, L. 1983; amd. Sec. 218, Ch. 265, L. 1993; amd. Sec. 3, Ch. 541, L. 1995; amd. Sec. 84, Ch. 562, L. 1999; amd. Sec. 4, Ch. 290, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 290 in first sentence after "available" deleted "to the city". Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7, Ch. 290, L. 2001, provided: "[This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana air national guard pursuant to [section 2] [19-13-210] will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board. The board shall notify the secretary of state and the code commissioner when this contingency is met."

Cross-References

Payment of contributions by employers — accompanying reports — penalty, 19-2-506.

19-13-606. Renumbered 19-13-214 by Code Commissioner, 1993.

19-13-607. Other money credited as employer contributions. All gifts, bequests, and emoluments given to an employer or member for the benefit of the retirement system or because of any member's service as a firefighter, except when specifically allowed to be retained by the member by the member's employer, must be paid to the board. The board shall deposit them in the pension trust fund. The amounts are employer contributions but are in addition to the amounts required by 19-13-605.

History: En. Sec. 33, Ch. 566, L. 1981; amd. Sec. 219, Ch. 265, L. 1993; amd. Sec. 85, Ch. 562, L. 1999.

Cross-References

Judges' retirement — payments into pension trust fund 19-5-401.
Highway patrol retirement — payments into pension trust fund, 19-6-401.
Sheriffs' retirement — sources of money in fund, 19-7-402.
Game wardens' and peace officers' retirement — contributions to pension trust fund 19-8-501.
Police retirement — statewide plan — other money credited as employer contributions, 19-9-705.
Police retirement — local funds — gifts and money applied to fund, 19-19-304.

19-13-608. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 13, L. 1987.

19-13-609. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 3, Ch. 138, L. 1991.

19-13-610 through 19-13-614 reserved.

19-13-615. Repealed. Sec. 11, Ch. 457, L. 1997; Sec. 40, Ch. 532, L. 1997.

History: En. Sec. 3, Ch. 454, L. 1989; amd. Sec. 215, Ch. 265, L. 1993; Sec. 19-13-506, MCA 1991; redes. 19-13-615 by Code Commissioner, 1993.

Part 7
Service Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — service retirement, Title 19, ch. 3, part 9.
Judges' retirement — service retirement, Title 19, ch. 5, part 5.
Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.
Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.
Game wardens' and peace officers' retirement — service retirement, Title 19, ch. 8, part 6.
Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.
Teachers' retirement — superannuation retirement, Title 19, ch. 20, part 8.

19-13-701. Eligibility for service retirement. (1) A member who has completed 20 years or more of membership service has attained normal retirement age and is eligible for service retirement.

(2) A vested member who terminates service before the minimum retirement date and keeps the member's accumulated contributions on deposit has attained normal retirement age and is eligible for service retirement commencing on the member's minimum retirement date.

History: En. Sec. 34, Ch. 566, L. 1981; amd. Sec. 7, Ch. 53, L. 1983; amd. Sec. 11, Ch. 86, L. 1985; amd. Sec. 17, Ch. 196, L. 1989; amd. Sec. 222, Ch. 265, L. 1993; amd. Sec. 4, Ch. 541, L. 1995; amd. Sec. 35, Ch. 370, L. 1997; amd. Sec. 5, Ch. 457, L. 1997; amd. Sec. 115, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) after "membership service" inserted "has attained normal retirement age and"; and in (2) after "deposit" inserted "has attained normal retirement age and". Amendment effective March 21, 2001.

19-13-702. Repealed. Sec. 13, Ch. 86, L. 1985.

History: En. Sec. 35, Ch. 566, L. 1981.

19-13-703. Repealed. Sec. 13, Ch. 86, L. 1985.

History: En. Sec. 36, Ch. 566, L. 1981.

19-13-704. Amount of service retirement benefit. (1) Except as provided in subsection (2), a member who retires with at least 5 years of membership service must receive a service retirement benefit equal to 2.5% of the member's final average compensation for each year of service credit.

(2) A member hired before July 1, 1981, who does not elect to be covered under 19-13-1010 is entitled to the greater of:

(a) the benefit provided under subsection (1); or

(b) (i) if the member retires with less than 20 years of service, a benefit equal to 2% of the member's final monthly compensation for each year of service; or

(ii) if the member retires with 20 or more years of service, a benefit equal to 50% of the member's final monthly compensation plus 2% of the member's final monthly compensation for each year of service over 20 years.

(3) Upon a retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the benefit as long as they remain dependent children as defined in 19-13-104.

History: En. Sec. 37, Ch. 566, L. 1981; amd. Sec. 12, Ch. 86, L. 1985; amd. Sec. 3, Ch. 63, L. 1989; amd. Sec. 223, Ch. 265, L. 1993; amd. Sec. 5, Ch. 541, L. 1995; amd. Secs. 6, 12, Ch. 457, L. 1997; amd. Sec. 86, Ch. 562, L. 1999.

Part 8
Disability Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — disability retirement, Title 19, ch. 3, part 10.
Judges' retirement — disability retirement benefits, Title 19, ch. 5, part 6.
Highway patrol retirement — disability retirement benefits, Title 19, ch. 6, part 6.
Sheriffs' retirement — disability retirement benefits, Title 19, ch. 7, part 6.
Game wardens' and peace officers' retirement — disability retirement benefits, Title 19, ch. 8, part 7.
Police retirement — statewide plan — disability retirement benefits, Title 19, ch. 9, part 9.
Teachers' retirement — disability retirement, Title 19, ch. 20, part 9.

19-13-801. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 38, Ch. 566, L. 1981.

19-13-802. Eligibility for disability retirement. If a member is determined by the board to be disabled, the member is entitled to receive a disability retirement benefit, regardless of the length of the member's service, beginning the first day after the date on which the member became disabled and terminated service because of the disability.

History: En. Sec. 39, Ch. 566, L. 1981; amd. Sec. 224, Ch. 265, L. 1993.

Cross-References

Disability defined, 19-2-303.
Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.

19-13-803. Amount of disability retirement benefit. (1) A member who becomes disabled:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's final average compensation;

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's final average compensation for each year of service credit.

(2) A member's disability retirement benefit must be paid first to the member during the member's lifetime and, upon the member's death, to the member's surviving spouse. If upon a member's death the member leaves no surviving spouse or upon the death of the surviving spouse, the member's benefit must be paid to the member's dependent children as long as they remain dependent children as defined in 19-13-104.

History: En. Sec. 40, Ch. 566, L. 1981; amd. Sec. 2, Ch. 617, L. 1991; amd. Sec. 225, Ch. 265, L. 1993; amd. Sec. 6, Ch. 541, L. 1995; amd. Sec. 7, Ch. 457, L. 1997.

Cross-References

Disability benefits — exclusion from income tax, 15-30-111.
Disability defined, 19-2-303.
Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.

19-13-804. Medical examination of disability retiree — cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination at the board's expense. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on. Based on the results of the examination, the board shall determine whether the recipient has the physical or mental capacity to perform the essential elements required by the recipient's former position. If the board determines that the recipient is not incapacitated, if the recipient refuses to submit to a medical examination, or if, when a position is available, the recipient cannot be reinstated under 19-13-805 for reasons unrelated to the disability, the recipient's disability retirement benefit must be canceled. The board shall notify the recipient of this determination and the cancellation of the recipient's benefit.

(2) The cancellation of a disability retirement benefit because a member is no longer incapacitated does not prejudice any right of the member to a service retirement benefit.

History: En. Sec. 41, Ch. 566, L. 1981; amd. Sec. 226, Ch. 265, L. 1993; amd. Sec. 25, Ch. 412, L. 1995; amd. Sec. 36, Ch. 370, L. 1997.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1015.

Judges' retirement — medical examination of disability retiree — cancellation of benefit, 19-5-612.
Highway patrol retirement — medical examination of disability retiree — cancellation of benefit, 19-6-612.
Sheriffs' retirement — medical examination of disability retiree — cancellation of benefit, 19-7-612.
Game wardens' and peace officers' retirement — medical examination of disability retiree — cancellation of benefit, 19-8-712.
Police retirement — statewide plan — reinstatement upon termination of benefit, 19-9-905.
Teachers' retirement — medical examination of disability retiree, 19-20-903.
Teachers' retirement — cancellation of allowance and restoration of membership, 19-20-905.

19-13-805. *(Temporary)* **Reinstatement upon termination of benefit.** (1) (a) Except as provided in subsection (1)(c), a member whose disability retirement benefit is canceled as provided in 19-13-804 must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if an appropriate vacancy exists within the member's fire department. The board shall advise the employer that the disability retirement benefit has been canceled and that the inactive member is eligible for reinstatement to duty. The fact that the member was retired for disability may not prejudice any right to reinstatement to duty that the inactive member may have or claim to have.

(b) If an appropriate vacancy does not exist within an inactive member's fire department when the member's disability benefit is canceled under 19-13-804, the member's benefit must be reinstated until a vacancy occurs.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(2) The city may request a medical or psychological review as to the ability of the member to return to work as a firefighter. If the board's findings are upheld, the city shall pay the costs of the review.

(3) If the inactive member again becomes an active member by returning to active work for an employer within 30 days following receipt of notice under 19-13-804, the member is considered to have been continuously employed during the term of the member's disability. If the inactive member fails to become an active member by returning to active work for an employer within 30 days following receipt of this notice, the member's termination of employment is considered to have occurred as of the member's disability retirement date and the retirement benefit, if any, to which the member becomes entitled on the member's service retirement must be determined accordingly.

19-13-805. *(Effective on occurrence of contingency)* **Reinstatement upon termination of benefit.** (1) (a) Except as provided in subsection (1)(c), a member whose disability retirement benefit is canceled as provided in 19-13-804 must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if an appropriate vacancy exists within the member's fire department. The board shall advise the employer that the disability retirement benefit has been canceled and that the inactive member is eligible for reinstatement to duty. The fact that the member was retired for disability may not prejudice any right to reinstatement to duty that the inactive member may have or claim to have.

(b) If an appropriate vacancy does not exist within an inactive member's fire department when the member's disability benefit is canceled under 19-13-804, the member's benefit must be reinstated until a vacancy occurs.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(2) The employer may request a medical or psychological review as to the ability of the member to return to work as a firefighter. If the board's findings are upheld, the employer shall pay the costs of the review.

(3) If the inactive member again becomes an active member by returning to active work for an employer within 30 days following receipt of notice under 19-13-804, the member is considered to have been continuously employed during the term of the member's disability. If the inactive member fails to become an active member by returning to active work for an

employer within 30 days following receipt of this notice, the member's termination of employment is considered to have occurred as of the member's disability retirement date and the retirement benefit, if any, to which the member becomes entitled on the member's service retirement must be determined accordingly.

History: En. Sec. 42, Ch. 566, L. 1981; amd. Sec. 227, Ch. 265, L. 1993; amd. Sec. 37, Ch. 370, L. 1997; amd. Sec. 5, Ch. 290, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 290 in two places in (2) substituted "employer" for "city". Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7, Ch. 290, L. 2001, provided: "[This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana air national guard pursuant to [section 2] [19-13-210] will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board. The board shall notify the secretary of state and the code commissioner when this contingency is met."

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1015.
Police retirement — statewide plan — disability — reinstatement upon termination of benefit, 19-9-905.
Volunteer Firefighters' Compensation Act — cancellation and reinstatement of disability benefits, 19-17-409.
Teachers' retirement — cancellation of allowance and restoration of membership, 19-20-905.

Part 9

Survivorship Benefits and Death Payments

Part Cross-References

Beneficiaries, Title 19, ch. 2, part 8.
Designation of beneficiary, 19-2-801.
Limitations on payment to person causing member's death or disability, 19-2-804.
Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.

19-13-901. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 43, Ch. 566, L. 1981; amd. Sec. 4, Ch. 63, L. 1989.

19-13-902. Survivorship benefit. (1) A member's surviving spouse, if there is one, must receive a survivorship benefit amount as provided in this section. If a member leaves no surviving spouse or upon the death of the surviving spouse, the member's surviving dependent children must collectively receive the same benefit that a surviving spouse would have received under this section. A child may receive a share of the benefit as long as the child is a dependent child, as defined in 19-13-104.

(2) (a) The survivorship benefit paid upon the death of an active member who has completed less than 20 years of membership service is one-half the final average compensation received by the member.

(b) The survivorship benefit paid upon the death of an active or inactive member who has completed over 20 years of membership service is the benefit amount to which the member was entitled on the date of death.

(3) Benefits provided under this section are subject to the benefit adjustments provided pursuant to part 10 of this chapter.

History: En. Sec. 44, Ch. 566, L. 1981; amd. Sec. 5, Ch. 63, L. 1989; amd. Sec. 228, Ch. 265, L. 1993; amd. Sec. 7, Ch. 541, L. 1995; amd. Sec. 8, Ch. 457, L. 1997; amd. Sec. 116, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning of first sentence of (1) substituted "A member's" for "Upon the death before retirement of an active member the member's" and at end substituted "amount as provided in this section" for "equal to one-half the final average compensation received by the member", in second sentence after "leaves" deleted "one or more dependent children, then, upon the member's death if the member leaves", near middle after "member's" inserted "surviving", and at end inserted "under this section", and at beginning of third sentence inserted "A child may receive a share of the benefit"; substituted (2) regarding payment of the survivorship benefit upon death of a member who has completed more than or less than 20 years of service for former (2) that read: "(2) If the deceased member completed over 20 years of membership service, the survivorship benefit must be equal to 2.5% of the final average compensation for each year of service"; inserted (3) providing that benefits are subject to benefit adjustments; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

PERS — amount of survivorship benefit, 19-3-1205.
Firefighters' retirement — pensions to surviving spouses and children, 19-18-605.

19-13-903. Payments to designated beneficiary. If, after a member dies, a benefit is not paid pursuant to 19-13-704, 19-13-803, or 19-13-902, then the board shall pay to the member's designated beneficiary the amount, if any, of the retired member's accumulated contributions minus the total of any benefits already paid from the member's account.

History: En. Sec. 45, Ch. 566, L. 1981; amd. Sec. 6, Ch. 186, L. 1983; amd. Sec. 229, Ch. 265, L. 1993; amd. Sec. 87, Ch. 562, L. 1999; amd. Sec. 117, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning substituted "If, after a member dies, a benefit is not paid pursuant to 19-13-704, 19-13-803, or 19-13-902, then" for "If a member dies without leaving a surviving spouse or dependent child and if the member had designated a beneficiary in writing to the board as provided in 19-2-801", after "pay to the" inserted "member's", and after "total of any" deleted "retirement" and deleted former second sentence that read: "If the deceased member did not designate a beneficiary or the beneficiary predeceased the member, the amount must be paid to the member's estate." Amendment effective March 21, 2001.

Cross-References

PERS — survivorship benefit elected by beneficiary, 19-3-1204.
Firefighters' retirement — payment of death benefits in absence of spouse or child, 19-18-607.

Part 10
Postretirement Benefits and Benefit Increases

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — minimum benefits and benefit increases, Title 19, ch. 3, part 16.
Highway patrol retirement — minimum benefits and benefit increases, Title 19, ch. 6, part 7.
Sheriffs' retirement — minimum benefits and benefit increases, Title 19, ch. 7, part 7.
Police retirement — statewide plan — minimum benefits and benefit increases, Title 19, ch. 9, part 10.

19-13-1001 through 19-13-1005. Repealed. Sec. 236, Ch. 265, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

19-13-1001.	En. Sec. 47, Ch. 566, L. 1981.
19-13-1002.	En. Sec. 48, Ch. 566, L. 1981.
19-13-1003.	En. Sec. 49, Ch. 566, L. 1981; amd. Sec. 3, Ch. 191, L. 1987; amd. Sec. 16, Ch. 823, L. 1991.
19-13-1004.	En. Sec. 50, Ch. 566, L. 1981.
19-13-1005.	En. Sec. 51, Ch. 566, L. 1981.

19-13-1006. Repealed. Sec. 11, Ch. 457, L. 1997.

History: En. Sec. 52, Ch. 566, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 468, L. 1983; amd. Sec. 1, Ch. 698, L. 1985; amd. Sec. 230, Ch. 265, L. 1993.

19-13-1007. *(Temporary)* **Minimum benefit adjustment.** (1) The following applies to a member with 10 or more years of service who has not elected to be covered under 19-13-1010:

(a) For the member or the member's surviving spouse or dependent children, the service retirement benefit provided in 19-13-704, the disability retirement benefit provided in 19-13-803, and the survivorship benefit provided in 19-13-902 may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed the member as a firefighter, as provided each year in the budget of that city.

(b) If after a member retires, the city that last employed the member no longer employs a full-paid firefighter, the member's or survivor's benefit under subsection (1)(a) must be adjusted on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter.

(2) If the employment of a vested member hired before July 1, 1981, who has not elected to be covered under 19-13-1010 is involuntarily discontinued because of the termination of employment of all full-paid firefighters in the city that employed the member, the member's service retirement benefit provided in 19-13-704 and the member's spouse's or dependent child's survivorship benefit provided in 19-13-902(1) may not be less than:

(a) if the member has earned 20 years or more of membership service, one-half the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter; or

(b) if the member has earned more than 5 but less than 20 years of membership service, 2.5% of the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter, for each year of the member's service.

19-13-1007. *(Effective on occurrence of contingency)* **Minimum benefit adjustment.** (1) The following applies to a member with 10 or more years of service who has not elected to be covered under 19-13-1010:

(a) For the member or the member's surviving spouse or dependent children, the service retirement benefit provided in 19-13-704, the disability retirement benefit provided in 19-13-803, and the survivorship benefit provided in 19-13-902 may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of the employer that last employed the member as a firefighter, as provided each year in the budget of that employer.

(b) If after a member retires, the employer that last employed the member no longer employs a full-paid firefighter, the member's or survivor's benefit under subsection (1)(a) must be adjusted on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those employers that participate in the retirement system and employ a full-paid firefighter.

(2) If the employment of a vested member hired before July 1, 1981, who has not elected to be covered under 19-13-1010 is involuntarily discontinued because of the termination of employment of all full-paid firefighters of the employer that employed the member, the member's service retirement benefit provided in 19-13-704 and the member's spouse's or dependent child's survivorship benefit provided in 19-13-902(1) may not be less than:

(a) if the member has earned 20 years or more of membership service, one-half the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those employers that participate in the retirement system and employ a full-paid firefighter; or

(b) if the member has earned more than 5 but less than 20 years of membership service, 2.5% of the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those employers that participate in the retirement system and employ a full-paid firefighter, for each year of the member's service.

History: En. Sec. 46, Ch. 566, L. 1981; amd. Sec. 3, Ch. 468, L. 1983; amd. Sec. 231, Ch. 265, L. 1993; amd. Sec. 8, Ch. 541, L. 1995; amd. secs. 5, 8(6), Ch. 445, L. 1997; amd. Sec. 88, Ch. 562, L. 1999; amd. Sec. 6, Ch. 290, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 290 throughout section substituted reference to employer for reference to city; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7, Ch. 290, L. 2001, provided: "[This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana air national guard pursuant to [section 2] [19-13-210] will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board. The board shall notify the secretary of state and the code commissioner when this contingency is met."

19-13-1008. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 14, L. 1987.

19-13-1009. Repealed. Sec. 11, Ch. 457, L. 1997.

History: En. Sec. 2, Ch. 454, L. 1989; amd. Sec. 232, Ch. 265, L. 1993; amd. Sec. 9, Ch. 541, L. 1995.

19-13-1010. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less

than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section.

History: En. Sec. 3, Ch. 287, L. 1997; amd. Sec. 89, Ch. 562, L. 1999; amd. Sec. 7, Ch. 62, L. 2001; amd. Sec. 17, Ch. 149, L. 2001; amd. Sec. 8, Ch. 309, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3)(a) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-13-1011. Election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-13-1010 remains valid. The decision of a member who elected not to participate under 19-13-1010 may be reversed under this section.

History: En. Sec. 18, Ch. 149, L. 2001.

Compiler's Comments

Effective Date: Section 22, Ch. 149, L. 2001, provided that this section is effective on passage and approval. Approved March 29, 2001.

CHAPTER 14

RESERVED

CHAPTER 15

RETIREMENT ADJUSTMENT

(Repealed. Sec. 74, Ch. 18, L. 1995)

Chapter Compiler's Comments

Histories of Repealed Sections:

19-15-101. En. Sec. 4, Ch. 823, L. 1991; amd. Sec. 2, Ch. 10, Sp. L. January 1992.
19-15-102. En. Sec. 5, Ch. 823, L. 1991; amd. Sec. 3, Ch. 10, Sp. L. January 1992.

CHAPTER 16

RESERVED

CHAPTER 17

VOLUNTEER FIREFIGHTERS' COMPENSATION ACT

Part 1 — General Provisions

19-17-101. Short title.
19-17-102. Definitions.
19-17-103. Payments to fire companies maintaining supplemental insurance.
19-17-104. Penalty for false statements or claims.
19-17-105. Duties of volunteer firefighters.
19-17-106. Pension trust fund established — restrictions on use.
19-17-107. Employment of actuary — biennial investigation.
19-17-108. Credit for service as volunteer firefighter.

Part 2 — Administration of Fund

19-17-201. Administration of chapter.
19-17-202. Reports of board.
19-17-203. Rules to be made by board.
19-17-204. Administrative expenses.

Part 3 — Contributions to Fund

19-17-301. Fire insurance premium tax to be paid into pension trust fund.
19-17-302. Investment of pension trust fund.

Part 4 — Pension, Disability, and Survivorship Benefits

19-17-401. Eligibility for pension and disability benefits.
19-17-402. Certificate of eligibility.
19-17-403. Application for benefits.
19-17-404. Amount of pension and disability benefits.
19-17-405. Survivorship benefits to surviving spouse or dependent children.
19-17-406. Termination of pension when no surviving spouse or child.
19-17-407. Exemption from taxation and legal process.
19-17-408. Medical review of certain disability retirees.
19-17-409. Cancellation and reinstatement of disability benefits.
19-17-410. Determination of disability.
19-17-411. Time benefits commence.

Part 5 — Medical and Funeral Expenses

19-17-501. Eligibility for medical and funeral expenses.
19-17-502. Procedure for claiming medical expenses.
19-17-503. Procedure for claiming funeral expenses.

19-17-504. Medical expenses.
19-17-505. Funeral expenses.
19-17-506. Payment of medical and funeral expenses.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Municipal fire departments, Title 7, ch. 33, part 41.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
The Public Employees' Retirement Act — general provisions, Title 19, ch. 2.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement system, Title 19, ch. 13.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.

Part 1
General Provisions

19-17-101. Short title. This chapter shall be known and may be cited as the "Volunteer Firefighters' Compensation Act".

History: En. Sec. 1, Ch. 65, L. 1935; re-en. Sec. 5158.1, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2020; Sec. 19-12-101, MCA 1991; redes. 19-17-101 by Code Commissioner, 1993.

19-17-102. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Active member" means a volunteer firefighter credited with service under this chapter during the most recently reportable fiscal year.

(2) "Benefit" means the pension, disability, or survivorship benefit provided under this chapter.

(3) "Board" means the public employees' retirement board provided for in 2-15-1009.

(4) "Claim" means a request from a member, surviving spouse, or dependent child for payment of medical or funeral expenses.

(5) "Department" means the department of administration.

(6) "Dependent child" means a child who is unmarried, who is under 18 years of age, and who is the child of a deceased member.

(7) "Disability" or "permanent total disability" means permanent total disability as defined in 39-71-116.

(8) "Fire company" means a fire company organized in an unincorporated area, town, or village in accordance with 7-33-2311.

(9) "Fiscal year" means the 12-month period that begins on July 1 and ends on June 30 of the following year.

(10) "Member" means a volunteer firefighter who has service credited under this chapter.

(11) "Pension trust fund" means the volunteer firefighters' pension trust fund established to pay claims and benefits under this chapter.

(12) "Retiree" or "retired member" means a member who is receiving full or partial participation benefits or disability benefits from the pension trust fund.

(13) "Service" means cumulative periods of active membership that are credited only in full fiscal year increments.

(14) "Supplemental insurance" means insurance that is carried by a fire company for the purposes of providing disability or death benefits and that is in addition to any insurance required by law, including workers' compensation insurance.

(15) "Surviving spouse" means the spouse married to a member when the member dies.

(16) "Survivorship benefit" means the monthly benefit paid to the surviving spouse or dependent child of a deceased member.

(17) "Volunteer firefighter" means a person who is an active member of an eligible fire company and is not compensated for services as a firefighter.

History: **(1) thru (3), (5)En. 11-2020.1 by Sec. 19, Ch. 157, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 1, Ch. 480, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-2020.1, R.C.M. 1947; (4)En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; Sec. 11-2022, R.C.M. 1947; R.C.M. 1947, 11-2020.1, 11-2022(5)(d); amd. Sec. 1, Ch. 57, L. 1983; amd. Sec. 19, Ch. 282, L. 1983; Sec. 19-12-102, MCA 1991; redes. 19-17-102 by Code Commissioner, 1993; amd. Sec. 4, Ch. 175, L. 1995; amd. Sec. 38, Ch. 370, L. 1997; amd. Sec. 90, Ch. 562, L. 1999; amd. Sec. 118, Ch. 99, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 99 in definition of pension trust fund after "pay" inserted "claims and"; in definition of retiree or retired member after "participation benefits" inserted "or disability benefits"; and at end of definition of service substituted "fiscal year increments" for "fiscal years". Amendment effective March 21, 2001.

19-17-103. Payments to fire companies maintaining supplemental insurance. To encourage and aid fire companies to maintain supplemental insurance to provide benefits when members are injured or killed while performing duties as volunteer firefighters, the board shall authorize payment of $75 per year for each motorized mobile unit of firefighting equipment, not to exceed $150 per fire company per year. Payment must be a charge against the pension trust fund and must be paid to each fire company maintaining supplemental insurance or to the organization or agency maintaining supplemental insurance for a fire company.

History: **En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2022(4); amd. Sec. 2, Ch. 57, L. 1983; Sec. 19-12-103, MCA 1991; redes. 19-17-103 by Code Commissioner, 1993; amd. Sec. 5, Ch. 175, L. 1995.**

Cross-References

City-county consolidation — no effect on benefits, 7-33-2110, 7-33-2316.
Group insurance for firefighters — funding, 7-33-4130.
Franchise disability insurance, 33-22-401.

19-17-104. Penalty for false statements or claims. A person required to make a statement or affidavit by this chapter who willfully falsifies the statement or affidavit or a person who files a false claim under this chapter is guilty of a misdemeanor and upon conviction shall be punished by a fine in an amount not exceeding $1,000 or by imprisonment for a term not exceeding 1 year, or both.

History: **En. Sec. 12, Ch. 65, L. 1935; re-en. Sec. 5158.12, R.C.M. 1935; amd. Sec. 30, Ch. 157, L. 1977; R.C.M. 1947, 11-2031; amd. Sec. 31, Ch. 114, L. 1979; Sec. 19-12-104, MCA 1991; redes. 19-17-104 by Code Commissioner, 1993; amd. Sec. 119, Ch. 99, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 99 near end after "punished by a fine" substituted "in an amount not exceeding $1,000 or by imprisonment for a term not exceeding 1 year" for "not exceeding $500 or imprisonment not exceeding 6 months"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

The Public Employees' Retirement Act — penalty for fraud, 19-2-1009.
Teachers' retirement — penalty for fraud, 19-20-105.

19-17-105. Duties of volunteer firefighters. The duties of a volunteer firefighter include any activity authorized by an officer of the fire company relating to travel to, participation in, and return from calls for fire protection, fire company meetings, training, medical assistance, search and rescue assistance, public service activities, such as parades, and calls for assistance to protect individual or public health and safety.

History: **En. Sec. 2, Ch. 49, L. 1983; Sec. 19-12-105, MCA 1991; redes. 19-17-105 by Code Commissioner, 1993.**

Cross-References

Limitation of liability of voluntary firefighters for emergency care, 27-1-714.

19-17-106. Pension trust fund established — restrictions on use. (1) A pension trust fund is established and maintained for payment of claims and benefits provided under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan.

(2) The pension trust fund must be funded on an actuarially sound basis. For purposes of this subsection, "actuarially sound basis" means that contributions must be sufficient to pay the full actuarial cost of the fund. The full actuarial cost includes both the normal cost of providing benefits as they accrue in the future and the cost of amortizing unfunded liabilities over a scheduled period of no more than 30 years.

(3) Except as provided in this section, a member or an employee of the department or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust fund;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust fund or deposits;

(c) in any manner use the pension trust fund except to make current and necessary payments that are authorized by the board; or

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust fund.

(4) The assets of the pension trust fund may not be used for or diverted to any purpose other than for the exclusive benefit of members, their surviving spouses, their dependent children, and qualified fire companies and for paying the reasonable administrative expenses of administering this chapter.

(5) Upon the termination of the pension trust fund, the substantial reduction in the number of members that would constitute a partial termination of the pension trust fund, or the complete discontinuance of contributions to the pension trust fund, the pension benefit accrued to each member directly affected by the occurrence becomes fully vested and nonforfeitable to the extent that the benefit is funded.

History: En. Sec. 1, Ch. 175, L. 1995; amd. Sec. 91, Ch. 562, L. 1999; amd. Sec. 120, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 inserted (2) requiring that the pension trust fund be funded on an actuarially sound basis; inserted (5) regarding vesting and nonforfeiture if the fund terminates or partially terminates or if contributions to the fund are discontinued; and made minor changes in style. Amendment effective March 21, 2001.

19-17-107. Employment of actuary — biennial investigation. (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public pension systems. The actuary is the technical adviser to the board on matters regarding the actuarial funding of the pension trust fund.

(2) The board shall require the actuary to make a biennial actuarial valuation of the assets and liabilities of the pension trust fund. The actuarial valuation must include the sufficiency of the fund to pay full and partial benefits to members and benefit recipients and must include recommendations for any changes that should be made to those benefits or the contributions to the pension trust fund to ensure the actuarial soundness of the pension trust fund.

(3) The board shall require the actuary to conduct periodic actuarial experience studies of the pension trust fund and to recommend any changes in actuarial assumptions or tables based upon the studies.

History: En. Sec. 2, Ch. 175, L. 1995.

19-17-108. Credit for service as volunteer firefighter. (1) The annual period of service that may be credited under this chapter is the fiscal year. A fractional part of a year may not count toward the service required for participation in this system. To be eligible to receive credit for any particular year, a volunteer firefighter shall serve with a fire company throughout the entire fiscal year.

(2) The years of service are cumulative and need not be continuous. Separate periods of service properly credited with different fire companies in different fire districts must be credited toward a member's eligibility for full or partial benefits.

(3) A volunteer firefighter must receive credit for service during any fiscal year if:

(a) during the fiscal year, the volunteer firefighter completes a minimum of 30 hours of instruction in matters pertaining to firefighting under a formal program that has been formulated, supervised, and certified to the board by the chief or supervisor of the fire company;

(b) the fire company maintained firefighting equipment that is in serviceable condition and owns one or more buildings used for the storage of that equipment that all together are valued at $12,000 or more; and

(c) the fire company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates.

History: **En. Sec. 3, Ch. 175, L. 1995; amd. Sec. 92, Ch. 562, L. 1999.**

Part 2
Administration of Fund

Part Cross-References

The Public Employees' Retirement Act — general provisions — administration of retirement systems, Title 19, ch. 2, part 4.

Teachers' retirement — administration of system, Title 19, ch. 20, part 2.

19-17-201. Administration of chapter. (1) The board is the trustee of all money collected under this chapter and has exclusive control of the administration of the pension trust fund except as otherwise provided by law.

(2) The department shall deposit in the state treasury all amounts received by it as provided in this chapter.

(3) The state treasurer is the custodian of the pension trust fund, subject to the control of the board for the administration of the fund and the board of investments for the investment of the fund.

(4) The board shall review the sufficiency of benefits provided under this chapter and recommend to the legislature those changes in benefits that may be necessary for retired members and their beneficiaries to maintain a stable standard of living.

History: **En. Sec. 7, Ch. 65, L. 1935; re-en. Sec. 5158.7, R.C.M. 1935; amd. Sec. 193, Ch. 147, L. 1963; amd. Sec. 1, Ch. 160, L. 1967; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 26, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2026; amd. Sec. 3, Ch. 57, L. 1983; amd. Sec. 7, Ch. 481, L. 1993; Sec. 19-12-201, MCA 1991; redes. 19-17-201 by Code Commissioner, 1993; amd. Sec. 6, Ch. 175, L. 1995.**

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Housing authority bonds as legal investments, 7-15-4505.

Separate investment funds, 17-6-203.

Permissible investments, 17-6-211.

PERS — contracts with political subdivisions, Title 19, ch. 3, part 2.

19-17-202. Reports of board. (1) As soon as practical after the close of each fiscal year, the board shall file with the governor a report covering administration of the Volunteer Firefighters' Compensation Act for that fiscal year.

(2) The report must include:

(a) a statement of the accumulated cash and securities in the pension trust fund as certified by the state treasurer and the board of investments; and

(b) the most recent published report of the actuary of the actuarial valuation of the assets and liabilities of the plan.

History: **En. Sec. 10, Ch. 65, L. 1935; re-en. Sec. 5158.10, R.C.M. 1935; amd. Sec. 5, Ch. 118, L. 1965; amd. Sec. 1, Ch. 159, L. 1967; amd. Sec. 28, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2029; amd. Sec. 4, Ch. 57, L. 1983; (3)En. Sec. 1, Ch. 81, L. 1991; amd. Sec. 38, Ch. 10, L. 1993; amd. Sec. 1, Ch. 283, L. 1993; Sec. 19-12-202, MCA 1991; redes. 19-17-202 by Code Commissioner, 1993; amd. Sec. 121, Ch. 99, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 99 in (1) substituted "As soon as practical after the close of each fiscal year, the board shall file with the governor a report covering administration of the Volunteer Firefighters' Compensation Act for that fiscal year" for "The board shall, not later than November 1 of each year, make a report to the governor covering the operations and proceedings for the prior fiscal year relative to its administration of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan"; in (2) substituted "The report must include:

(a) a statement of the accumulated cash and securities in the pension trust fund as certified by the state treasurer and the board of investments; and

(b) the most recent published report of the actuary of the actuarial valuation of the assets and liabilities of the plan" for "The report may include suggestions or recommendations that the board considers of value for public information"; and deleted former (2) that read: "(2) Copies of the reports must be made available by the board to the chief or other representative of any volunteer fire company or companies that request them." Amendment effective March 21, 2001.

Cross-References

PERS — report by Division to Governor, 19-2-407.

19-17-203. Rules to be made by board. The board shall make such rules as it considers necessary and advisable in its administration of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan, not inconsistent with the provisions thereof.

History: En. Sec. 8, Ch. 65, L. 1935; re-en. Sec. 5158.8, R.C.M. 1935; amd. Sec. 2, Ch. 160, L. 1967; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 27, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2027(1); amd. Sec. 5, Ch. 57, L. 1983; Sec. 19-12-203, MCA 1991; redes. 19-17-203 by Code Commissioner, 1993.

Cross-References

Public Employees' Retirement Board — powers and duties, 19-2-403.

19-17-204. Administrative expenses. Necessary expenses for the administration of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan are a charge against the pension trust fund. The necessary administrative expenses attributable to this chapter must be paid from the investment earnings on the public employees' pension trust fund. Before fiscal yearend closing, the board shall compute the expenses directly or proportionally attributable to this chapter over the past fiscal year and transfer that amount from the volunteer firefighters' pension trust fund to the public employees' pension trust fund.

History: En. Sec. 8, Ch. 65, L. 1935; re-en. Sec. 5158.8, R.C.M. 1935; amd. Sec. 2, Ch. 160, L. 1967; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 27, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2027(2); amd. Sec. 6, Ch. 57, L. 1983; Sec. 19-12-204, MCA 1991; redes. 19-17-204 by Code Commissioner, 1993; amd. Sec. 7, Ch. 175, L. 1995; amd. Sec. 93, Ch. 562, L. 1999.

Part 3
Contributions to Fund

Part Cross-References

Management and investment of pension trust funds, Title 19, ch. 2, part 5.
PERS — contributions, Title 19, ch. 3, part 3.
Judges' retirement — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-17-301. Fire insurance premium tax to be paid into pension trust fund. The state auditor shall annually pay from the general fund to the pension trust fund a sum equivalent to 5% of the premium taxes collected from insurers authorized to effect insurance against risks enumerated in 50-3-109. The sum must be computed before the amounts provided for by 19-13-604, and 19-18-512 are deducted. The money must be used for the payment of claims, benefits, and administrative costs as provided in this chapter. The money is statutorily appropriated as provided in 17-7-502.

History: En. Sec. 11, Ch. 65, L. 1935; re-en. Sec. 5158.11, R.C.M. 1935; amd. Sec. 1, Ch. 125, L. 1947; amd. Sec. 1, Ch. 164, L. 1959; amd. Sec. 191, Ch. 147, L. 1963; amd. Sec. 2, Ch. 204, L. 1975; amd. Sec. 4, Ch. 95, L. 1977; amd. Sec. 29, Ch. 157, L. 1977; amd. Sec. 3, Ch. 480, L. 1977; R.C.M. 1947, 11-2030; amd. Sec. 1, Ch. 313, L. 1981; amd. Sec. 61, Ch. 566, L. 1981; amd. Sec. 28, Ch. 703, L. 1985; Sec. 19-12-301, MCA 1991; redes. 19-17-301 by Code Commissioner, 1993; amd. Sec. 8, Ch. 175, L. 1995; amd. Secs. 28, 39(2)(a), Ch. 532, L. 1997.

Cross-References

State Auditor, Art. VI, sec. 1, Mont. Const.; 2-15-601.
Ex officio Commissioner of Insurance, 2-15-1903.
Legislators — continued participation, 5-2-304.
Firefighters' retirement — State Auditor to pay association out of insurance premium taxes, 19-18-512.
Insurance premium tax, 33-2-705.

19-17-302. Investment of pension trust fund. (1) The pension trust fund must be invested by the board of investments as part of the unified investment program described in Title 17, chapter 6, part 2.

(2) All income earned on any assets constituting a part of the pension trust fund must be paid into the pension trust fund as received.

(3) For investment purposes, the pension trust fund may be commingled with other pension funds administered by the board, but a separate account must be maintained for each system.

History: En. Sec. 9, Ch. 65, L. 1935; re-en. Sec. 5158.9, R.C.M. 1935; amd. Sec. 194, Ch. 147, L. 1963; amd. Sec. 3, Ch. 95, L. 1977; R.C.M. 1947, 11-2028; Sec. 19-12-302, MCA 1991; redes. 19-17-302 by Code Commissioner, 1993; amd. Sec. 9, Ch. 175, L. 1995.

Cross-References

Investment of public funds and public retirement system assets, Art. VIII, sec 13, Mont. Const.
Public retirement system assets, Art. VIII, sec 15, Mont. Const.

Part 4
Pension, Disability, and Survivorship Benefits

Part Cross-References

PERS — service retirement, Title 19, ch. 3, part 9.
Judges' retirement — service retirement, Title 19, ch. 5, part 5.
Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.
Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.
Game wardens' and peace officers' retirement — service retirement, Title 19, ch. 8, part 6.
Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.
Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.
Firefighters' retirement — benefits, Title 19, ch. 18, part 6.
Police retirement — local funds — eligibility for retirement benefits, Title 19, ch. 19, part 4.
Teachers' retirement — superannuation retirement, Title 19, ch. 20, part 8.

19-17-401. Eligibility for pension and disability benefits. (1) To qualify for pension and disability benefits under this chapter, a member shall meet the requirements of subsections (2) or (3) and (4).

(2) (a) For full pension benefits, a member must have completed at least 20 years' service and must have attained 55 years of age, but need not be an active member of a fire company when 55 years of age is reached.

(b) A member who is prevented from completing at least 20 years' service may qualify for partial pension benefits if the member has completed at least 10 years' service and has attained 60 years of age, but need not be an active member of any fire company when 60 years of age is reached.

(3) An active member of a fire company whose duty-related injury results in permanent total disability, as defined in 39-71-116 and determined pursuant to 19-17-410, is eligible, regardless of age or service, to receive a disability benefit.

(4) Except as provided in subsection (5):

(a) to receive a pension or disability benefit, a volunteer firefighter may not be an active member of any fire company; and

(b) a volunteer firefighter who receives a pension or disability benefit under this chapter may not become an active member of any fire company.

(5) In the event of a declared national, state, or local emergency affecting Montana, a retired volunteer firefighter who is not receiving a disability benefit under this chapter may return to active service with a fire company for the duration of the declared emergency without becoming an active member under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan and without loss of previously earned benefits. Only the fire chief of the fire company may determine who may return to active service. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to active service.

History: En. Sec. 4, Ch. 65, L. 1935; re-en. Sec. 5158.4, R.C.M. 1935; amd. Sec. 2, Ch. 118, L. 1965; amd. Sec. 1, Ch. 161, L. 1967; amd. Sec. 1, Ch. 46, L. 1969; amd. Sec. 2, Ch. 80, L. 1971; amd. Sec. 2, Ch. 199, L. 1973; amd. Sec. 1, Ch. 48, L. 1975; amd. Sec. 22, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2023(2); amd. Sec. 1, Ch. 177, L. 1981; amd. Sec. 66, Ch. 464, L. 1987; amd. Sec. 2, Ch. 283, L. 1993; Sec. 19-12-401, MCA 1991; redes. 19-17-401 by Code Commissioner, 1993; amd. Sec. 10, Ch. 175, L. 1995; amd. Sec. 122, Ch. 99, L. 2001; amd. Sec. 1, Ch. 164, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 99 in (3) near middle after "total disability" inserted "as defined in 39-71-116 and determined pursuant to 19-17-410"; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 164 in (4) at beginning inserted exception clause; inserted (5) allowing a retired firefighter not receiving a disability benefit under this chapter to work for a fire company during a declared emergency without becoming an active member of the volunteer firefighters' pension plan and without loss of previously earned benefits and providing that the fire chief determines who may return to service and prescribes the returnee's duties; and made minor changes in style. Amendment effective March 29, 2001.

Cross-References

City-county consolidation — no effect on benefits, 7-33-2110, 7-33-2316.

19-17-402. Certificate of eligibility. The chief or presiding officer of each fire company that claims eligibility under this chapter shall, on or before September 1 of each year, file a certificate on a form to be provided by the board, subscribed and verified under oath, stating whether the company qualified under 19-17-108(3) during the preceding fiscal year. The certificate must contain the date of organization. The certificate must list the full name, social security number, and date of birth of each member of the fire company who was a member for the entire fiscal year and satisfactorily completed 30 hours of instruction during the preceding fiscal year, as required by 19-17-108(3). The certificate must be maintained by the board for the purpose of establishing service for members and eligibility for benefits.

History: En. 11-2020.2 by Sec. 20, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2020.2; amd. Sec. 7, Ch. 57, L. 1983; Sec. 19-12-402, MCA 1991; redes. 19-17-402 by Code Commissioner, 1993; amd. Sec. 2, Ch. 137, L. 1995; amd. Sec. 11, Ch. 175, L. 1995.

19-17-403. Application for benefits. (1) A member may, as provided in this section, apply for retirement benefits before terminating covered service, but commencement of the benefits must be as provided in 19-17-411.

(2) A member, surviving spouse, or dependent child shall apply for benefits on a form provided by the board.

(3) The application must contain:

(a) the name, address, and date of birth of the member, surviving spouse, or dependent child;

(b) the date of birth of the member;

(c) the date of the member's death, if applicable; and

(d) the fiscal years during which service as an active member is claimed and the names of the fire companies with which the service was rendered.

(4) The board may require any proof of age, death, and service that it may consider proper, but it must accept a certificate properly completed and timely filed under 19-17-402 or subsection (3) of section 22, Chapter 157, Laws of 1977, as prima facie proof of service.

History: En. Sec. 5, Ch. 65, L. 1935; re-en. Sec. 5158.5, R.C.M. 1935; amd. Sec. 3, Ch. 118, L. 1965; amd. Sec. 4, Ch. 160, L. 1967; amd. Sec. 3, Ch. 80, L. 1971; amd. Sec. 23, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2024(2); amd. Sec. 8, Ch. 57, L. 1983; Sec. 19-12-403, MCA 1991; redes. 19-17-403 by Code Commissioner, 1993; amd. Sec. 12, Ch. 175, L. 1995; amd. Sec. 123, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 inserted (1) allowing application for benefits before terminating covered service; inserted (3)(c) requiring the date of the member's death, if applicable; in (4) near beginning after "proof of age" inserted "death"; deleted former (4) that read: "(4) If a qualified member properly submits an application, the member is entitled to receive benefits as of the first day of the month following approval of the application"; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Public Employees' Retirement Board — powers and duties, 19-2-403.

Highway patrol retirement — eligibility and application for service retirement benefit, 19-6-501.

Sheriffs' retirement — eligibility and application for service retirement, 19-7-501.

Firefighters' retirement — procedure — applying for and collecting benefits, 19-18-611.

19-17-404. Amount of pension and disability benefits. (1) (a) Each eligible member must receive pension and disability benefits as provided in this section.

(b) The base pension benefit is $150 a month for members who are eligible for full pension benefits.

(c) Partial pension benefits are calculated by multiplying the full pension benefit in subsection (1)(b) by a fraction, the numerator of which is the member's years of service and the denominator of which is 20.

(2) The disability benefit paid to eligible members is calculated in the same manner as partial pension benefits described in subsection (1)(c), except that the numerator may not be less than 10.

(3) If any fraudulent change or any inadvertent mistake in records results in any member, surviving spouse, or dependent child receiving more or less than entitled to, then on the discovery of the error, the board shall correct the error and adjust the payments to the member, surviving spouse, or dependent child in an equitable manner.

History: En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2022(5)(a) thru (5)(c); amd. Sec. 1, Ch. 24, L. 1983; amd. Sec. 9, Ch. 57, L. 1983; amd. Sec. 2, Ch. 81, L. 1991; amd. Sec. 3, Ch. 283, L. 1993; Sec. 19-12-404, MCA 1991; redes. 19-17-404 by Code Commissioner, 1993; amd. Sec. 13, Ch. 175, L. 1995; amd. Sec. 124, Ch. 99, L. 2001; amd. Sec. 1, Ch. 209, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 99 inserted (3) regarding correction of errors and adjustment of payments upon a fraudulent change or inadvertent mistake in records; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 209 in (1)(b) increased base pension benefit amount from $100 to $150 a month; and in (1)(c) after "benefit" substituted "in subsection (1)(b)" for "of $100". Amendment effective July 1, 2001.

19-17-405. Survivorship benefits to surviving spouse or dependent children. (1) Subject to the limitation in subsection (3), survivorship benefits equal to the full or partial pension benefits otherwise payable to the deceased member must be paid or continue to be paid to the surviving spouse or, if the deceased member left no surviving spouse but left a dependent child, to the guardian or other person having custody of the dependent child.

(2) The survivorship benefit must be paid in each of the following circumstances:

(a) the death on or after July 1, 1995, of a member who had at least 10 years of service and who was not receiving pension benefits; or

(b) the death on or after July 1, 1985, of a retired member who was receiving pension benefits but who had not received benefits for a total of 40 months.

(3) Survivorship benefits under subsection (1) terminate when benefits have been paid for a total of 40 months, including any pension or disability benefits paid to the retiree before death. At the request of the recipient, a lump-sum payment may be made in lieu of up to 40 months of survivorship benefits.

History: En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(3), (4); amd. Sec. 1, Ch. 130, L. 1985; Sec. 19-12-405, MCA 1991; redes. 19-17-405 by Code Commissioner, 1993; amd. Sec. 14, Ch. 175, L. 1995; amd. Sec. 125, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 in (3) inserted second sentence allowing lump-sum payment in lieu of up to 40 months of survivorship benefits. Amendment effective March 21, 2001.

Cross-References

The Public Employees' Retirement Act — designation of beneficiary, 19-2-801.

19-17-406. Termination of pension when no surviving spouse or child. If a deceased volunteer firefighter leaves neither a surviving spouse nor a child under the age of 18, his pension shall terminate at the end of the month prior to the month in which his death occurs.

History: En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(5); Sec. 19-12-406, MCA 1991; redes. 19-17-406 by Code Commissioner, 1993.

Cross-References

Firefighters' unified retirement — payment of death benefits in absence of spouse or child, 19-13-903.

19-17-407. Exemption from taxation and legal process. (1) The first $3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation.

(2) Except as provided in 19-2-907 and 19-2-909, benefits received under this part are not subject to execution, garnishment, attachment, or any other process.

History: En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(2); amd. Sec. 10, Ch. 57, L. 1983; amd. Sec. 20, Ch. 282, L. 1983; amd. Sec. 15, Ch. 823, L. 1991; Sec. 19-12-407, MCA 1991; redes. 19-17-407 by Code Commissioner, 1993; amd. Sec. 15, Ch. 175, L. 1995; amd. Sec. 126, Ch. 99, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 99 inserted (2) providing that with some exceptions, benefits are not subject to execution, garnishment, attachment, or any other process; and made minor changes in style. Amendment effective March 21, 2001.

Cross-References

Benefits tax-exempt, 15-30-111.

Residential property tax credit for elderly — partial exclusion of retirement benefits from income, 15-30-171.

Firefighters' retirement — protection of benefits from legal process and taxation — nonassignability, 19-18-612.

Police retirement — local funds — protection of benefits from legal process and taxation, 19-19-504.

Exempt property — bankruptcy proceeding, 31-2-106.

Exemption of benefits from liens of health care providers, 71-3-1118.

19-17-408. Medical review of certain disability retirees. The board may require a member who receives a disability benefit to undergo periodic medical examinations. The examinations must be made by a physician or surgeon at the member's residence or a place mutually agreeable to the board and the member. Upon the basis of these examinations and the advice of the board's consulting physician, the board shall determine, by reason of physical or mental capacity, whether the member remains permanently and totally disabled.

History: En. Sec. 2, Ch. 177, L. 1981; Sec. 19-12-408, MCA 1991; redes. 19-17-408 by Code Commissioner, 1993; amd. Sec. 16, Ch. 175, L. 1995.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1015.

Judges' retirement — medical examination of disability retiree — cancellation of benefit, 19-5-612.

Highway patrol retirement — medical examination of disability retiree — cancellation of benefit, 19-6-612.

Sheriffs' retirement — medical examination of disability retiree — cancellation of benefit, 19-7-612.

Game wardens' and peace officers' retirement — medical examination of disability retiree — cancellation of benefit, 19-8-712.

Firefighters' unified retirement — medical examination of disability retiree — cancellation of benefit, 19-13-804.

Teachers' retirement — medical examination of disability retiree, 19-20-903.

19-17-409. Cancellation and reinstatement of disability benefits. (1) The board may cancel a member's disability benefit if:

(a) the board determines, as provided in 19-17-408, that the member is no longer disabled;

(b) the member refuses to submit to a medical examination under 19-17-408; or

(c) the member engages in a gainful occupation during the previous year and earns compensation exceeding $5,500.

(2) The cancellation of a disability benefit under this section does not prejudice any right of a member to other pension benefits payable under the Volunteer Firefighters' Compensation Act.

(3) If the member's earnings in any year after the cancellation of disability benefits under subsection (1)(c) are less than $5,500, the disability benefit must be reinstated.

History: En. Sec. 3, Ch. 177, L. 1981; Sec. 19-12-409, MCA 1991; redes. 19-17-409 by Code Commissioner, 1993; amd. Sec. 17, Ch. 175, L. 1995.

19-17-410. Determination of disability. (1) The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or any authorized representative of the board may order medical examinations, conduct contested case hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability benefits.

(2) The board shall retain medical personnel to advise it in initially determining the nature and extent of disabling conditions.

History: En. Sec. 127, Ch. 99, L. 2001.

Compiler's Comments

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

19-17-411. Time benefits commence. (1) The pension benefit payable pursuant to this part may commence on the first day of the month following the eligible member's last day of service or on the first day of a later month following filing of the written application.

(2) The disability retirement benefit payable pursuant to this part must commence on the day following the member's termination from service.

(3) Monthly survivorship benefits payable pursuant to this part must commence on the day following the death of the member.

History: En. Sec. 128, Ch. 99, L. 2001.

Compiler's Comments

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

Part 5
Medical and Funeral Expenses

Part Cross-References

PERS — disability retirement, Title 19, ch. 3, part 10.

PERS — survivorship benefits and death payments, Title 19, ch. 3, part 12.

Judges' retirement — disability retirement and death payments, Title 19, ch. 5, parts 6 and 8.

Highway patrol retirement — disability retirement and death payments, Title 19, ch. 6, parts 6 and 9.

Sheriffs' retirement — disability retirement and death payments, Title 19, ch. 7, parts 6 and 9 .

Game wardens' and peace officers' retirement — disability retirement and death payments, Title 19, ch. 8, parts 7 and 10.

Police retirement — statewide plan — disability retirement and death payments, Title 19, ch. 9, parts 9 and 11.

Firefighters' unified retirement — disability retirement and death payments, Title 19, ch. 13, parts 8 and 9.

Firefighters' retirement — benefits, Title 19, ch. 18, part 6.

Police retirement — local funds — benefits, Title 19, ch. 19, part 5.

Teachers' retirement — disability retirement and death benefits, Title 19, ch. 20, parts 9 and 10.

19-17-501. Eligibility for medical and funeral expenses. (1) To qualify for medical expenses under 19-17-504, a volunteer firefighter must be an active member of a fire company that is not covered by workers' compensation insurance when the injury or illness occurs.

(2) To qualify for funeral expenses under 19-17-505, a volunteer firefighter must, at the time of death, be an active member of a fire company.

History: En. Sec. 4, Ch. 65, L. 1935; re-en. Sec. 5158.4, R.C.M. 1935; amd. Sec. 2, Ch. 118, L. 1965; amd. Sec. 1, Ch. 161, L. 1967; amd. Sec. 1, Ch. 46, L. 1969; amd. Sec. 2, Ch. 80, L. 1971; amd. Sec. 2, Ch. 199, L. 1973; amd. Sec. 1, Ch. 48, L. 1975; amd. Sec. 1, Ch. 233, L. 1975; amd. Sec. 22, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2023(1); amd. Sec. 3, Ch. 129, L. 1991; Sec. 19-12-501, MCA 1991; redes. 19-17-501 by Code Commissioner, 1993; amd. Sec. 18, Ch. 175, L. 1995.

19-17-502. Procedure for claiming medical expenses. (1) A member who claims medical expenses under 19-17-504 shall submit a claim on a form provided by the board. The claim must be verified by the member and by competent medical authority. The claim must be submitted within 1 year from the date of incurring the injury or illness.

(2) The claim must contain:

(a) the name and address of the member;

(b) the date, place, and manner of incurring the injury or illness;

(c) the name and address of the attending physician, surgeon, or nurse, if any;

(d) the dates of hospitalization, if hospitalized;

(e) an affidavit from the attending physician, surgeon, or nurse that describes the nature of the injury or illness, the number and dates of visits, and the expenses;

(f) if hospitalized, an affidavit from competent authority stating the nature of the injury or illness, the dates of hospitalization, and the expenses;

(g) an affidavit from the chief or secretary of the fire company stating that the fire company was duly organized under the laws of Montana in an unincorporated town or village, that the member was, at the time of the injury or illness, an active member of the company, and that the injury or illness was incurred in the line of duty as described in 19-17-105.

History: En. Sec. 5, Ch. 65, L. 1935; re-en. Sec. 5158.5, R.C.M. 1935; amd. Sec. 3, Ch. 118, L. 1965; amd. Sec. 4, Ch. 160, L. 1967; amd. Sec. 3, Ch. 80, L. 1971; amd. Sec. 23, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2024(1); amd. Sec. 3, Ch. 49, L. 1983; amd. Sec. 11, Ch. 57, L. 1983; Sec. 19-12-502, MCA 1991; redes. 19-17-502 by Code Commissioner, 1993; amd. Sec. 19, Ch. 175, L. 1995.

Cross-References

PERS — application for disability retirement benefit, 19-3-1005.

Firefighters' retirement — procedure — applying for and collecting benefits, 19-18-611.

19-17-503. Procedure for claiming funeral expenses. A person claiming the funeral expenses provided for in 19-17-505 shall submit the claim on a form provided by the board, in accordance with the board's rules.

History: En. 11-2024.1 by Sec. 24, Ch. 157, L. 1977; R.C.M. 1947, 11-2024.1; amd. Sec. 12, Ch. 57, L. 1983; Sec. 19-12-503, MCA 1991; redes. 19-17-503 by Code Commissioner, 1993; amd. Sec. 20, Ch. 175, L. 1995.

Cross-References

Firefighters' retirement — procedure — applying for and collecting benefits, 19-18-611.

19-17-504. Medical expenses. (1) The board shall authorize payment of some or all medical expenses resulting from an injury or illness that was incurred in the line of duty, as described in 19-17-105, and that required the services of a physician, surgeon, or nurse, whether or not the member was hospitalized. The payments must equal the amount of the member's necessary and reasonable out-of-pocket medical expenses that resulted directly from the injury or illness and that were billed within 36 months following the date of the injury or illness. The total claim for reimbursement may not exceed $25,000.

(2) If an injury incurred in the line of duty results in the loss by amputation of an arm, hand, leg, or foot, the enucleation of an eye, or the loss of any natural teeth, the board shall authorize either a payment for the cost of a prosthesis or a payment of $1,500 to help defray the cost of a prosthesis, whichever is less. The prosthesis may be replaced when necessary, but not more often than every 5 years. The board shall authorize payment of not more than $1,500 of the replacement costs.

History: En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; R.C.M. 1947, 11-2022(1), (2); amd. Sec. 4, Ch. 49, L. 1983; amd. Sec. 13, Ch. 57, L. 1983; Sec. 19-12-504, MCA 1991; redes. 19-17-504 by Code Commissioner, 1993; amd. Sec. 21, Ch. 175, L. 1995.

19-17-505. Funeral expenses. The board shall authorize payment of reasonable expenses or $1,500, whichever is less, to aid in defraying the funeral expenses of an active member whose death occurs in the line of duty.

History: En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2022(3); Sec. 19-12-505, MCA 1991; redes. 19-17-505 by Code Commissioner, 1993; amd. Sec. 22, Ch. 175, L. 1995.

19-17-506. Payment of medical and funeral expenses. When a claim under 19-17-504 or 19-17-505 is received and approved by the board, payment must be made directly to the appropriate provider of the medical care or funeral services.

History: En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(1); amd. Sec. 14, Ch. 57, L. 1983; Sec. 19-12-506, MCA 1991; redes. 19-17-506 by Code Commissioner, 1993; amd. Sec. 23, Ch. 175, L. 1995.

CHAPTER 18

FIREFIGHTERS' RETIREMENT

Part 1 — General Provisions

19-18-101. Definitions.
19-18-102. Formation of fire department relief association — membership.
19-18-103. Officers of association.
19-18-104. Board of trustees of association.
19-18-105. Establishment of disability and pension fund.
19-18-106. Transfer of money into fund by city treasurer.
19-18-107. Retention of firefighters' rights when local government consolidated.

Part 2 — Management and Protection of Fund

19-18-201. Management of fund.
19-18-202. Treasurer's bond.
19-18-203. Use of disability and pension fund.
19-18-204. Review and report by board of trustees.
19-18-205. Annual report of secretary and treasurer to association and state auditor.
19-18-206. Authority of department of administration — mishandling of funds.
19-18-207. Theft from funds.
19-18-208. Protection of fund as to bank depository securities.

Part 3 reserved

Part 4 — Management of Association—Investment of Fund

19-18-401. Management of association.
19-18-402. Investment of fund by trustees.
19-18-403. Investment of fund by board of investments.

Part 5 — Contributions to Fund

19-18-501. Contributions to fund.
19-18-502. Refund of firefighter's contribution.
19-18-503. Special tax levy for fund required.
19-18-504. Amount of tax levy.
19-18-505 through 19-18-510 reserved.
19-18-511. Annual report of clerks of cities having fire departments.
19-18-512. State auditor — payment to association.
19-18-513. Repealed.
19-18-514. State treasurer to pay warrants.

Part 6 — Benefits

19-18-601. Benefits the association may provide.
19-18-602. Service pension.
19-18-603. Partial service pension.
19-18-604. Disability pension.
19-18-605. Pensions to surviving spouses and children.
19-18-606. Repealed.
19-18-607. Payment of death benefits in absence of spouse or child.
19-18-608 through 19-18-610 reserved.
19-18-611. Procedure — applying for and collecting benefits.
19-18-612. Protection of benefits from legal process and taxation — nonassignability.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Municipal fire departments, Title 7, ch. 33, part 41.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
The Public Employees' Retirement Act — general provisions, Title 19, ch. 2.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement system, Title 19, ch. 13.

Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.

Part 1
General Provisions

19-18-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Association" means the fire department relief association provided for in 19-18-102.

(2) "Disability and pension fund" or "fund" means the fund provided for in 19-18-105.

(3) "Fire department" includes all fire departments, consisting of paid, part-paid, or volunteer firefighters or any combination thereof, recognized by the city or town council of an incorporated city or town of this state.

(4) "Incorporated city or town" includes county seats whether incorporated or not.

(5) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities or subsequent districts created for urban fire protection services.

History: (1) thru (4)En. 11-1910.1 by Sec. 1, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-1910.1, R.C.M. 1947; (5)En. 11-1910.2 by Sec. 2, Ch. 489, L. 1977; Sec. 11-1910.2, R.C.M. 1947; R.C.M. 1947, 11-1910.1, 11-1910.2; Sec. 19-11-101, MCA 1991; redes. 19-18-101 by Code Commissioner, 1993.

19-18-102. Formation of fire department relief association — membership. (1) The confirmed members of a fire department, as defined in 19-18-101, may form a local association to be known as the fire department relief association of the city or town of .... (naming the city or town). When an association is formed, it shall be incorporated under the laws of this state. No one who is serving as a substitute, who is on probation, or who has not been confirmed as a member of the fire department is eligible for membership in the association.

(2) An association may only be formed and incorporated if:

(a) its formation is authorized by subsection (1); and

(b) the fire department has firefighting equipment in serviceable condition which has a value of $750 or more.

History: En. Sec. 5, Ch. 129, L. 1911; re-en. Sec. 5129, R.C.M. 1921; amd. Sec. 11, Ch. 58, L. 1927; re-en. Sec. 5129, R.C.M. 1935; amd. Sec. 7, Ch. 157, L. 1977; R.C.M. 1947, 11-1922(1), (2); Sec. 19-11-102, MCA 1991; redes. 19-18-102 by Code Commissioner, 1993.

Cross-References

Legislators — continued participation, 5-2-304.
Cooperative associations, Title 35, ch. 15.

19-18-103. Officers of association. When an association is formed, the members shall elect officers by a majority vote. The officers shall be a president, a secretary, a treasurer, and five members to serve on the board of trustees. After the incorporation of an association, the officers shall be elected annually on or before April 15. The members may elect the city or town treasurer ex officio treasurer of the association by a majority vote.

History: En. Sec. 5, Ch. 129, L. 1911; re-en. Sec. 5129, R.C.M. 1921; amd. Sec. 11, Ch. 58, L. 1927; re-en. Sec. 5129, R.C.M. 1935; amd. Sec. 7, Ch. 157, L. 1977; R.C.M. 1947, 11-1922(3); Sec. 19-11-103, MCA 1991; redes. 19-18-103 by Code Commissioner, 1993.

Cross-References

Cooperative associations — directors and officers, 35-15-304.

19-18-104. Board of trustees of association. A board of trustees of such fire department relief association shall be created to consist of seven members:

(1) the president of the fire department relief association and the chief of the fire department, if an active member of the association, shall be ex officio members; and

(2) five members to be elected by the members of such association at the annual election, to be held on or before April 15 of each year.

History: En. Sec. 4, Ch. 71, L. 1907; Sec. 3337, Rev. C. 1907; re-en. Sec. 5120, R.C.M. 1921; amd. Sec. 4, Ch. 58, L. 1927; R.C.M. 1947, 11-1913; Sec. 19-11-104, MCA 1991; redes. 19-18-104 by Code Commissioner, 1993.

Cross-References

Police retirement — local funds — local boards of trustees of funds, 19-19-201.
Trustees, Title 72, ch. 33, part 6.
Trust administration, Title 72, ch. 34.

19-18-105. Establishment of disability and pension fund. A fund to be known as the "disability and pension fund" of the fire department relief association of the city or town shall be established and maintained in every city or town where the fire department has formed or hereafter forms an association under 19-18-102.

History: En. Sec. 1, Ch. 71, L. 1907; Sec. 3334, Rev. C. 1907; re-en. Sec. 5117, R.C.M. 1921; amd. Sec. 1, Ch. 58, L. 1927; re-en. Sec. 5117, R.C.M. 1935; amd. Sec. 2, Ch. 157, L. 1977; R.C.M. 1947, 11-1910(1); Sec. 19-11-105, MCA 1991; redes. 19-18-105 by Code Commissioner, 1993.

19-18-106. Transfer of money into fund by city treasurer. Whenever a fire department relief association has been formed and the treasurer of the association has furnished the bond required by 19-18-202, the city treasurer shall pay to the treasurer of the association all money held by the city treasurer to the credit of the disability and pension fund, taking a proper receipt therefor. Thereafter, the city treasurer shall, as moneys are received by him for the credit of the fund or association, turn the same over to the treasurer of the association, taking proper receipts therefor.

History: En. Sec. 7, Ch. 129, L. 1911; re-en. Sec. 5131, R.C.M. 1921; amd. Sec. 13, Ch. 58, L. 1927; re-en. Sec. 5131, R.C.M. 1935; amd. Sec. 9, Ch. 157, L. 1977; R.C.M. 1947, 11-1924; Sec. 19-11-106, MCA 1991; redes. 19-18-106 by Code Commissioner, 1993.

19-18-107. Retention of firefighters' rights when local government consolidated. A firefighter who has vested rights in a disability and pension fund maintains prior vested rights in the fund upon its transfer to a consolidated county municipality. A disability and pension fund established as required by law in a city or town of the county prior to the election and qualification of a commission under Title 7 or other acts of consolidation or disincorporation shall be continued as one such fund for the fire department of the municipality, subject, however, to the prior vested rights of firefighters employed by any fire department established as required by law in a city or town of the county prior to the election and qualification of a commission under Title 7 or other acts of consolidation or disincorporation. The board of trustees of the disability and pension fund shall continue as provided in 19-18-104. Except as provided in this section, the disability and pension fund shall be continued and administered in the manner prescribed by law for such funds.

History: En. Sec. 83, Ch. 121, L. 1923; re-en. Sec. 5520.84, R.C.M. 1935; amd. Sec. 1, Ch. 192, L. 1961; amd. Sec. 1, Ch. 34, L. 1975; amd. Sec. 31, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3524(2); Sec. 19-11-107, MCA 1991; redes. 19-18-107 by Code Commissioner, 1993.

Cross-References

Creation, alteration, and abandonment of local governments, Title 7, ch. 2.
Alternative forms of local government, Title 7, ch. 3.
Firefighter's rights in event of city-county consolidation, 7-33-4131.
Sheriffs' retirement — service under municipal police officers' retirement system prior to or following city-county consolidation, 19-7-801.
Police retirement — statewide plan — effect on members of prior plans, 19-9-206.
Firefighters' unified retirement — effect on members of prior plans, 19-13-310.

Part 2
Management and Protection of Fund

Part Cross-References

The Public Employees' Retirement Act — general provisions — management and investment of pension trust funds, Title 19, ch. 2, part 5.
Teachers' retirement — management of funds, Title 19, ch. 20, part 5.
Discrimination in insurance and retirement plans, 49-2-309.

19-18-201. Management of fund. Except as otherwise provided in this chapter, the association and its board of trustees have full charge, management, and control of the disability and pension fund. The fund shall be kept separate from other funds and shall be held by the treasurer of the association.

History: En. Sec. 13, Ch. 129, L. 1911; re-en. Sec. 5137, R.C.M. 1921; re-en. Sec. 5137, R.C.M. 1935; amd. Sec. 17, Ch. 157, L. 1977; Sec. 11-1930, R.C.M. 1947; En. Sec. 1, Ch. 71, L. 1907; Sec. 3334, Rev. C. 1907;

re-en Sec 5117, R.C.M. 1921; amd. Sec. 1, Ch. 58, L. 1927; re-en. Sec. 5117, R.C.M. 1935; amd. Sec. 2, Ch. 157, L. 1977; Sec. 11-1910, R.C.M 1947; R.C.M. 1947, 11-1910(2), 11-1930; Sec. 19-11-201, MCA 1991; redes. 19-18-201 by Code Commissioner, 1993.

19-18-202. Treasurer's bond. No treasurer of an association may enter upon his duties until he has given the association a sufficient bond of not less than 50% of the amount of the cash funds and securities of the association for the faithful performance of his duties according to law. The amount of the bond shall be approved by the association and may not exceed $25,000. The bond shall be paid for by the association. If the city or town treasurer has been elected ex officio treasurer of the association, his official bond will cover the faithful discharge of his duties as such.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(2); Sec. 19-11-202, MCA 1991; redes. 19-18-202 by Code Commissioner, 1993.

Cross-References

Official bonds, Title 2, ch. 9, part 5.

State finance — limits on expenditures — penalty for violation, 17-8-103, 17-8-104.

19-18-203. Use of disability and pension fund. The fund may not be used for any purpose other than investment, as provided in part 4 of this chapter, and the payment of the following:

(1) a service pension to a member who, by reason of service, has become entitled to a service pension;

(2) a pension to a member who has become permanently maimed or disabled;

(3) a benefit or allowance to a member who has suffered a permanent disabling injury;

(4) a benefit or allowance to a member who has contracted a permanent disabling sickness;

(5) a benefit, not exceeding $750, to defray the funeral expenses of a member;

(6) benefits to the surviving spouse, child, or children of a deceased member as provided in this chapter;

(7) premiums on a blanket policy of insurance covering the members of the fire department and providing for payment of compensation in case of the death of or injury to any such member;

(8) the return of employee contributions as provided in this chapter.

History: En. Sec. 11, Ch. 129, L. 1911; re-en. Sec. 5135, R.C.M. 1921; amd. Sec. 17, Ch. 58, L. 1927; amd. Sec. 1, Ch. 103, L. 1931; re-en. Sec. 5135, R.C.M. 1935; amd. Sec. 8, Ch. 208, L. 1967; amd. Sec. 2, Ch. 47, L. 1975; amd. Sec. 6, Ch. 535, L. 1975; amd. Sec. 15, Ch. 157, L. 1977; R.C.M. 1947, 11-1928(1); amd. Sec. 65, Ch. 370, L. 1987; Sec. 19-11-203, MCA 1991; redes. 19-18-203 by Code Commissioner, 1993.

Cross-References

The Public Employees' Retirement Act — restrictions on use of funds, 19-2-505.

Teachers' retirement — restrictions on use of money, 19-20-502.

19-18-204. Review and report by board of trustees. The board of trustees of the association shall review the accounts of the association at least every 6 months and shall report the condition of them at the next regular meeting of the association.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(1); amd. Sec. 22, Ch. 489, L. 1991; Sec. 19-11-204, MCA 1991; redes. 19-18-204 by Code Commissioner, 1993.

19-18-205. Annual report of secretary and treasurer to association and state auditor. The secretary and treasurer of the association shall annually prepare a report of its receipts and expenditures for the preceding year in accordance with 2-7-503, showing to whom and for what purposes money has been expended. The secretary and treasurer shall file the report with the association, the department of administration, and the state auditor. Money may not be paid to the treasurer of the association until the report is filed.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(1); amd. Sec. 23, Ch. 489, L. 1991; Sec. 19-11-205, MCA 1991; redes. 19-18-205 by Code Commissioner, 1993; amd. Sec. 47, Ch. 483, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 483 in second sentence after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

State Auditor, Art. VI, sec. 1, Mont. Const.; 2-15-601.

Police retirement — local funds — trustees' report to State Auditor, 19-19-204.

19-18-206. Authority of department of administration — mishandling of funds. (1) All of the financial books and accounts of the association are subject at all times to examination by the department of administration.

(2) When a complaint is made to the department of administration that any money paid to the treasurer of the association has been or is being spent for an unauthorized purpose and, upon examination, the money is found to have been spent contrary to the authority given, the department shall report to the governor, upon whose directions to the state auditor warrants may not be issued to the association treasurer until the misspent money has been returned.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(3)(a), (3)(b); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; Sec. 19-11-206, MCA 1991; redes. 19-18-206 by Code Commissioner, 1993; amd. Sec. 48, Ch. 483, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 483 in (1) and (2) after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Department of Commerce, Title 2, ch. 15, part 18.

19-18-207. Theft from funds. Any person who fraudulently appropriates any money or other valuable thing belonging to the disability and pension fund of any fire department relief association or who takes part in or in any manner aids in any scheme or plan whereby the fund or association is defrauded out of any of the money in the fund is guilty of theft and upon conviction thereof shall be punished by imprisonment in the state prison for not less than 1 year or more than 10 years, by a fine of not more than $50,000, or by both such fine and imprisonment.

History: En. Sec. 8, Ch. 71, L. 1907; Sec. 3341, Rev. C. 1907; re-en. Sec. 5124, R.C.M. 1921; amd. Sec. 7, Ch. 58, L. 1927; re-en. Sec. 5124, R.C.M. 1935; amd. Sec. 44, Ch. 359, L. 1977; R.C.M. 1947, 11-1916; amd. Sec. 7, Ch. 198, L. 1981; Sec. 19-11-207, MCA 1991; redes. 19-18-207 by Code Commissioner, 1993.

Cross-References

The Public Employees' Retirement Act — penalty for fraud, 19-2-1009.

Volunteer Firefighters' Compensation Act — penalty for false statements or claims, 19-17-104.

Teachers' retirement — penalty for fraud, 19-20-105.

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Theft, 45-6-301.

19-18-208. Protection of fund as to bank depository securities. The cash in the disability and pension fund shall have the same protection as to depository securities furnished by banks as the other funds of the city or town.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(part); Sec. 19-11-208, MCA 1991; redes. 19-18-208 by Code Commissioner, 1993.

Cross-References

Deposit of public funds in financial institutions, 7-6-201.

Giving security for deposit prohibited — exceptions, 32-1-447.

Part 3 reserved

Part 4
Management of Association — Investment of Fund

Part Cross-References

The Public Employees' Retirement Act — general provisions — management and investment of pension trust funds, Title 19, ch. 2, part 5.

Teachers' retirement — management of funds, Title 19, ch. 20, part 5.

19-18-401. Management of association. The management of the fire department relief associations and of fire department relief associations of pure volunteer fire departments in first- and second-class cities is vested in the boards of trustees, except as provided in 19-18-402 and 19-18-403.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(2)(a); amd. Sec. 2, Ch. 270, L. 1981; amd. Sec. 54, Ch. 566, L. 1981; Sec. 19-11-401, MCA 1991; redes. 19-18-401 by Code Commissioner, 1993.

19-18-402. Investment of fund by trustees. (1) Subject to the provisions of 19-18-403, when so directed by a majority vote of the members of the association, the board of trustees may invest the surplus money in the fund or any part thereof in:

(a) time or saving deposits in a solvent bank, building and loan association, savings and loan association, or credit union operating in the county where the city or town is located;

(b) bonds or other securities of the United States government; or

(c) general obligation bonds or warrants of any state, county, or city.

(2) At the time of purchase the investments must be stamped in boldface type substantially as follows: "property of the .... fire department relief association and negotiable only upon the order of the board of trustees of such association".

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(2)(b); amd. Sec. 1, Ch. 393, L. 1979; amd. Sec. 15, Ch. 421, L. 1985; Sec. 19-11-402, MCA 1991; redes. 19-18-402 by Code Commissioner, 1993.

Cross-References

Housing authority bonds as legal investments, 7-15-4505.

Bond issues, Title 17, ch. 5.

Banks — demand or time deposits, 32-1-445.

Powers and duties of building and loan associations, 32-2-401.

Credit unions — general powers, 32-3-401.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

19-18-403. Investment of fund by board of investments. (1) Whenever the average yield on investments of public retirement funds under the board of investments exceeds by 1% in any fiscal year the average yield on investments of the fund made pursuant to 19-18-402, the surplus money in the fund must be remitted to the state treasurer for investment under the direction of the board of investments as is provided in 17-6-204. The board of investments shall advise the association of the current yield on investments of public retirement funds.

(2) As used in subsection (1), "surplus money" means the excess over the greater of the following:

(a) 1 ½ times the monthly benefit paid in the preceding month; or

(b) $5,000.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(2)(c); amd. Sec. 2, Ch. 393, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 55, Ch. 566, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; Sec. 19-11-403, MCA 1991; redes. 19-18-403 by Code Commissioner, 1993; amd. Sec. 49, Ch. 483, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 483 in (1) near beginning of second sentence substituted "board of investments" for "department of commerce"; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.
Department of Commerce, Title 2, ch. 15, part 18.
Housing authority bonds as legal investments, 7-15-4505.
Separate investment funds, 17-6-203.
Permissible investments, 17-6-211.

Part 5
Contributions to Fund

Part Cross-References

Management and investment of pension trust funds, Title 19, ch. 2, part 5.
PERS — contributions, Title 19, ch. 3, part 3.
Judges' retirement — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-18-501. Contributions to fund. The disability and pension fund shall consist of:

(1) all bequests, fees, gifts, emoluments, donations, or money from other sources given or paid to the fund, except as otherwise designated by the donor;

(2) a monthly fee which shall be paid into the fund by each paid or part-paid member of the association amounting to 6% of the member's regular monthly salary;

(3) the proceeds of the tax levy provided for in 19-18-503 and 19-18-504;

(4) all moneys received from the state, including those provided for in 19-18-512; and

(5) all interest and other income earned from the investment of the fund.

History: En. Sec. 2, Ch. 71, L. 1907; Sec. 3335, Rev. C. 1907; re-en. Sec. 5118, R.C.M. 1921; amd. Sec. 2, Ch. 58, L. 1927; re-en. Sec. 5118, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1939; amd. Sec. 1, Ch. 208, L. 1967; amd. Sec. 3, Ch. 535, L. 1975; amd. Sec. 3, Ch. 157, L. 1977; amd. Sec. 1, Ch. 484, L. 1977; R.C.M. 1947, 11-1911(1); Sec. 19-11-501, MCA 1991; redes. 19-18-501 by Code Commissioner, 1993.

19-18-502. Refund of firefighter's contribution. A firefighter is entitled to a refund, in a lump sum and without interest, of all his monthly contributions to the fund, within 60 days after his permanent separation from service in the fire department, except for separation by reason of retirement, death, or disability which would otherwise qualify him or his surviving spouse or children to receive benefits or an allowance from the association. A firefighter who is eligible to receive a partial service pension under 19-18-603 may either elect to take the refund provided for in this section or elect to receive the partial pension.

History: En. Sec. 2, Ch. 71, L. 1907; Sec. 3335, Rev. C. 1907; re-en. Sec. 5118, R.C.M. 1921; amd. Sec. 2, Ch. 58, L. 1927; re-en. Sec. 5118, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1939; amd. Sec. 1, Ch. 208, L. 1967; amd. Sec. 3, Ch. 535, L. 1975; amd. Sec. 3, Ch. 157, L. 1977; amd. Sec. 1, Ch. 484, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1911(2); Sec. 19-11-502, MCA 1991; redes. 19-18-502 by Code Commissioner, 1993.

Cross-References

The Public Employees' Retirement Act — refund of member's contributions on termination of service, 19-2-602.
Judges' retirement — refunds in case of resignation or discharge, 19-5-403.
Teachers' retirement — withdrawal of accumulated contributions, 19-20-603.

19-18-503. Special tax levy for fund required. (1) The purpose of this section is to provide a means by which each disability and pension fund may be maintained at a level equal to at least 0.21% but no more than 0.52% of the total assessed value of taxable property, determined as provided in 15-8-111, within the limits of the city or town.

(2) Subject to 15-10-420, if the fund contains less than 0.21% of the total assessed value of all taxable property within the limits of the city or town, the governing body of the city or town shall, at the time of the levy of the annual tax, levy a tax as provided in 19-18-504. The tax must be collected as other taxes are collected and, when collected, must be paid into the disability and pension fund.

History: En. Sec. 3, Ch. 71, L. 1907; Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R.C.M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; re-en. Sec. 5119, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1939; amd.

Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 107, L. 1959; amd. Sec. 1, Ch. 24, L. 1965; amd. Sec. 2, Ch. 208, L. 1967; amd. Sec. 1, Ch. 170, L. 1974; amd. Sec. 4, Ch. 157, L. 1977; R.C.M. 1947, 11-1912(1); amd. Sec. 59, Ch. 614, L. 1981; amd. Sec. 2, Ch. 372, L. 1983; amd. Sec. 1, Ch. 606, L. 1989; Sec. 19-11-503, MCA 1991; redes. 19-18-503 by Code Commissioner, 1993; amd. Sec. 1, Ch. 553, L. 1999; amd. Sec. 29, Ch. 29, L. 2001; amd. Sec. 112, Ch. 574, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 29 in (1) after "at least" substituted "0.21% but not more than 0.52% of the total assessed value of taxable property, determined as provided in 15-8-111" for "4% but no more than 10% of the taxable valuation of all taxable property"; and near beginning of (2) after "less than" substituted "0.21% of the total assessed value" for "4% of the taxable valuation". Amendment effective July 1, 2001.

Chapter 574 in (2) at beginning inserted "Subject to 15-10-420" and in two places before "tax" deleted "special"; deleted former (3) that read: "(3) If a special tax for the disability and pension fund is levied by a third-class city or town using the all-purpose mill levy, the special tax levy must be made in addition to the all-purpose levy"; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 35, Ch. 29, L. 2001, provided: "(1) [This act] applies to the authorization and issuance of bonds occurring on or after July 1, 2001.

(2) Debt limits established under [this act] do not apply to bonds authorized before July 1, 2001, regardless of when the bonds are issued."

Cross-References

Power to levy taxes for pension funds unaffected by law or Department of Public Safety, 7-3-4464.

Municipal taxation, Title 7, ch. 6, part 44.

Property tax limitation, Title 15, ch. 10, part 4.

Firefighters' unified retirement — taxing authority of employers, 19-13-214.

19-18-504. Amount of tax levy. Whenever the fund contains an amount that is less than 0.21% of the total assessed value of taxable property, determined as provided in 15-8-111, within the city or town, the city or town council shall, subject to 15-10-420, levy an annual tax on the taxable value of all taxable property within the city or town. When the fund contains an amount that is less than 0.52% but more than 0.21% of the total assessed value of all taxable property within the city or town, the city or town council may, if authorized by the voters as provided in 15-10-425, levy an annual tax.

History: En. Sec. 3, Ch. 71, L. 1907; Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R.C.M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; re-en. Sec. 5119, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1939; amd. Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 107, L. 1959; amd. Sec. 1, Ch. 24, L. 1965; amd. Sec. 2, Ch. 208, L. 1967; amd. Sec. 1, Ch. 170, L. 1974; amd. Sec. 4, Ch. 157, L. 1977; R.C.M. 1947, 11-1912(2); amd. Sec. 56, Ch. 566, L. 1981; amd. Sec. 60, Ch. 614, L. 1981; amd. Sec. 2, Ch. 606, L. 1989; Sec. 19-11-504, MCA 1991; redes. 19-18-504 by Code Commissioner, 1993; amd. Sec. 2, Ch. 553, L. 1999; amd. Sec. 30, Ch. 29, L. 2001; amd. Sec. 26, Ch. 495, L. 2001; amd. Sec. 113, Ch. 574, L. 2001.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 29 in first sentence after "less than" substituted "0.21% of the total assessed value of taxable property, determined as provided in 15-8-111" for "4% of the taxable valuation of all taxable property" and after "shall" inserted "subject to 15-10-420" and in second sentence after "less than" substituted "0.52% but more than 0.21% of the total assessed value" for "10% but more than 4% of the taxable valuation"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 495 in first sentence substituted "annual tax" for "annual special tax" and in second sentence inserted "as provided in 15-10-425" and substituted "annual tax" for "annual special tax"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 574 in first sentence after "council shall" substituted "subject to 15-10-420, levy an annual tax on the taxable value of all taxable property" for "levy an annual special tax of not less than 1 mill and not more than 4 mills on each dollar of taxable valuation of all taxable property" and at end of second sentence substituted "voters as provided in 15-10-425, levy an annual tax" for "voters, levy an annual special tax of not less than 1 mill and not more than 4 mills on each dollar of taxable valuation"; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 35, Ch. 29, L. 2001, provided: "(1) [This act] applies to the authorization and issuance of bonds occurring on or after July 1, 2001.

(2) Debt limits established under [this act] do not apply to bonds authorized before July 1, 2001, regardless of when the bonds are issued."

19-18-505 through 19-18-510 reserved.

19-18-511. Annual report of clerks of cities having fire departments. On or before April 1 annually, the clerk of every city having an organized fire department or a partly paid or volunteer department shall file with the commissioner of insurance of this state his certificate stating such fact, the system of water supply in use in such fire department, the number of its organized companies, steam, hand, or other engines, hook-and-ladder trucks, hose-carts, and feet of hose in actual use, and such other facts as the commissioner may require.

History: En. Sec. 1, Ch. 129, L. 1911; re-en. Sec. 5125, R.C.M. 1921; re-en. Sec. 5125, R.C.M. 1935; amd. Sec. 1, Ch. 228, L. 1975; R.C.M. 1947, 11-1917; Sec. 19-11-511, MCA 1991; redes. 19-18-511 by Code Commissioner, 1993.

Cross-References

Duties of City Clerk related to administration, 7-4-4501.

19-18-512. State auditor — payment to association. (1) After the end of the fiscal year, the state auditor shall issue and deliver the warrant described in this subsection to the treasurer of each city or town that has a fire department relief association entitled by law to receive payments. The warrant must be for the use and benefit of the association. The warrant must be for an amount equal to 1 ½ mills of the total taxable value of the city or town and must be paid out of the general fund. The payment is statutorily appropriated as provided in 17-7-502.

(2) The payment provided for in subsection (1) must be for at least $100.

History: En. Sec. 3, Ch. 129, L. 1911; amd. Sec. 1, Ch. 49, L. 1915; re-en. Sec. 5127, R.C.M. 1921; amd. Sec. 9, Ch. 58, L. 1927; amd. Sec. 1, Ch. 127, L. 1933; amd. Sec. 1, Ch. 15, L. 1935; re-en. Sec. 5127, R.C.M. 1935; amd. Sec. 1, Ch. 127, L. 1947; amd. Sec. 1, Ch. 183, L. 1959; amd. Sec. 1, Ch. 54, L. 1963; amd. Sec. 4, Ch. 208, L. 1967; amd. Sec. 1, Ch. 203, L. 1969; amd. Sec. 1, Ch. 301, L. 1974; amd. Sec. 1, Ch. 227, L. 1975; amd. Sec. 2, Ch. 228, L. 1975; amd. Sec. 1, Ch. 264, L. 1975; amd. Sec. 6, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; amd. Sec. 27, Ch. 566, L. 1977; R.C.M. 1947, 11-1919; amd. Sec. 1, Ch. 296, L. 1979; amd. Sec. 4, Ch. 250, L. 1981; amd. Sec. 57, Ch. 566, L. 1981; amd. Sec. 25, Ch. 703, L. 1985; Sec. 19-11-512, MCA 1991; redes. 19-18-512 by Code Commissioner, 1993; amd. Sec. 29, Ch. 532, L. 1997.

Cross-References

State Auditor, Art. VI, sec. 1, Mont. Const.; 2-15-601.
State Auditor ex officio Commissioner of Insurance, 2-15-1903.
City Treasurer, 7-4-4701.
Volunteer Firefighters' Compensation Act — fire insurance premium tax to be paid into fund, 19-17-301.
Insurance premium tax, 33-2-705.

19-18-513. Repealed. Sec. 40, Ch. 532, L. 1997.

History: En. Sec. 2, Ch. 15, L. 1935; re-en. Sec. 5127.1, R.C.M. 1935; amd. Sec. 69, Ch. 147, L. 1963; amd. Sec. 2, Ch. 366, L. 1974; R.C.M. 1947, 11-1920; amd. Sec. 58, Ch. 566, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 26, Ch. 703, L. 1985; Sec. 19-11-513, MCA 1991; redes. 19-18-513 by Code Commissioner, 1993.

19-18-514. State treasurer to pay warrants. The state treasurer is hereby authorized and directed, upon the presentation to him of a warrant drawn pursuant to this chapter, to pay to the treasurer of the city or town, out of moneys in the state special revenue fund dedicated for such purpose, the amount of such warrant specified, which amount shall be paid by said city treasurer to said fire department relief association.

History: En. Sec. 4, Ch. 129, L. 1911; re-en. Sec. 5128, R.C.M. 1921; amd. Sec. 10, Ch. 58, L. 1927; re-en. Sec. 5128, R.C.M. 1935; amd. Sec. 70, Ch. 147, L. 1963; R.C.M. 1947, 11-1921; amd. Sec. 2, Ch. 296, L. 1979; amd. Sec. 59, Ch. 566, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; Sec. 19-11-514, MCA 1991; redes. 19-18-514 by Code Commissioner, 1993.

Cross-References

Ex officio State Treasurer, 2-15-1002.

Part 6
Benefits

19-18-601. Benefits the association may provide. Every fire department relief association may allow to its members benefits for the following causes, as provided by law:

(1) a service pension to a member who, by reason of service, has become entitled to a service pension;
(2) to a member who has become maimed or disabled for life in line of duty;
(3) to a member who has suffered injury in line of duty;
(4) to a member who has contracted sickness in line of duty;
(5) funeral expenses of a member;
(6) pensions to the surviving spouse, orphan, or orphans of a deceased member.

History: **En. Sec. 7, Ch. 71, L. 1907; Sec. 3340, Rev. C. 1907; re-en. Sec. 5123, R.C.M. 1921; amd. Sec. 6, Ch. 58, L. 1927; re-en. Sec. 5123, R.C.M. 1935; amd. Sec. 3, Ch. 208, L. 1967; amd. Sec. 4, Ch. 535, L. 1975; R.C.M. 1947, 11-1915(part); Sec. 19-11-601, MCA 1991; redes. 19-18-601 by Code Commissioner, 1993.**

19-18-602. Service pension. (1) Each association shall pay, out of its disability and pension fund, a service pension to each of its members who elects to retire from active service after having completed 20 years or more of active duty and has reached the age of 50 years as a fully paid member of a paid or partly paid and partly volunteer fire department of the city or town in which the association was formed. The pension must be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for the member's services as an active member of the fire department.

(2) Effective July 1, 1974, a member who completes 20 years of service and elects to serve additional years must receive the pension provided for in subsection (1) increased at the rate of 1% a year for each additional year of service completed, up to a maximum of 60% of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for services as an active member of the fire department. A member is not eligible to receive a service pension prior to attaining the age of 50 years.

(3) (a) The monthly pension paid to members retiring on or after July 1, 1973, must be at least one-half the regular monthly salary, excluding overtime and payments in lieu of sick leave and annual leave, paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to a member retiring prior to July 1, 1974, must be at least $200.

(b) In the case of volunteer firefighters, the pension may be set by the board of trustees of the association, but may not exceed $225 a month.

(4) As of July 1, 1977, a member is not eligible to receive a service pension under this section unless the member is making a monthly contribution to the disability and pension fund, as required by 19-18-501, and is on active duty as a fully paid member of a fire department when the member reaches the age of 50 years.

(5) A member of a pure volunteer fire department who has served 20 years or more as an active member of the fire department is entitled to the benefits provided for in this chapter regardless of age. A member of a pure volunteer fire department who has completed 10 years' service as an active member of the fire department but who is prevented from completing 20 years' service by dissolution or discontinuance of the member's volunteer fire department, personal relocation because of transfer or loss of employment, personal disability, or any other factor beyond the member's reasonable control may qualify for a partial or reduced pension in an amount and to the extent determined by the board of trustees of the association, regardless of age.

History: **En. Sec. 8, Ch. 129, L. 1911; amd. Sec. 1, Ch. 66, L. 1919; re-en. Sec. 5132, R.C.M. 1921; amd. Sec. 14, Ch. 58, L. 1927; re-en. Sec. 5132, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1939; amd. Sec. 1, Ch. 98, L. 1945; amd. Sec. 1, Ch. 194, L. 1949; amd. Sec. 1, Ch. 56, L. 1963; amd. Sec. 5, Ch. 208, L. 1967; amd. Sec. 1, Ch. 267, L. 1973; amd. Sec. 1, Ch. 36, L. 1974; amd. Sec. 1, Ch. 163, L. 1974; amd. Sec. 1, Ch. 299, L. 1974; amd. Sec. 1, Ch. 58, L. 1977; amd. Sec. 10, Ch. 157, L. 1977; amd. Sec. 3, Ch. 484, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1925; amd. Sec. 1, Ch. 446, L. 1983; Sec. 19-11-602, MCA 1991; redes. 19-18-602 by Code Commissioner, 1993; amd. Sec. 1, Ch. 51, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 51 in (3)(b) after "pension may" substituted "be set by the board of trustees of the association, but may not exceed $225 a month" for "not exceed $150 a month"; and made minor changes in style. Amendment effective October 1, 2001.

19-18-603. Partial service pension. (1) A member of a fire department relief association is eligible to receive a partial service pension if he:

(a) has completed at least 10 years of active duty as a fully paid member of a fire department but has not both completed 20 years of service and attained age 50 as an active firefighter;

(b) is permanently separated from service on or after July 1, 1977;

(c) does not qualify for a disability pension under 19-18-604; and

(d) does not receive a refund of his contributions under 19-18-502.

(2) The right to receive the pension vests upon the firefighter's permanent separation from service, but the payments may not commence until the date he would have both reached his 50th birthday and completed 20 years of service as a member of a fire department had his active duty not been terminated.

(3) The pension shall be paid out of the disability and pension fund and shall consist of monthly payments in an amount equal to the number of years of the firefighter's service divided by the number of years of service the firefighter would have had if he had remained in active duty as a member of a fire department until the date he would have both attained age 50 and completed 20 years of service, multiplied by one-half of the sum last received by the firefighter as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department.

(4) If the firefighter dies after he is permanently separated from service and before he both reaches the age of 50 years and would have completed 20 years of service as an active member of a fire department, the payments prescribed in subsection (3) shall be made to the surviving spouse commencing on the date the firefighter would have both reached his 50th birthday and completed 20 years of service as an active member of a fire department and terminating upon the surviving spouse's death or remarriage. If there is no surviving spouse or the surviving spouse dies or remarries and if the firefighter leaves one or more children who have not reached the age of 18 years, the children shall receive the payments until the youngest reaches the age of 18 years.

(5) If the firefighter dies after he both reaches the age of 50 years and would have completed 20 years of service as an active member of a fire department, the payments shall be made to the surviving spouse or children as provided in subsection (4).

(6) The pension escalation provisions of 19-18-602 do not apply to pensions received under this section.

History: En. 11-1925.1 by Sec. 2, Ch. 484, L. 1977; R.C.M. 1947, 11-1925.1; amd. Sec. 29, Ch. 114, L. 1979; Sec. 19-11-603, MCA 1991; redes. 19-18-603 by Code Commissioner, 1993.

Cross-References

PERS — early retirement benefit, 19-3-906.
Judges' retirement — involuntary retirement benefit, 19-5-503.
Highway patrol retirement — early retirement benefit, 19-6-503.
Teachers' retirement — early retirement, 19-20-802.

19-18-604. Disability pension. (1) Each association shall pay a disability pension, out of its disability and pension fund, to each of its members who has become disabled by reason of sickness or injury. The pension shall be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services to the fire department of the city or town in which the association was formed.

(2) Effective July 1, 1974, a member who completes 20 years of service and elects to serve additional years shall receive the pension provided for in subsection (1) increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department.

(3) The monthly pension paid to members retiring on or after July 1, 1973, must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to a member retiring prior to July 1, 1974, must be at least $200. In the case of volunteer firefighters, the disability pension may not exceed $125 a month.

History: En. Sec. 9, Ch. 129, L. 1911; amd. Sec. 2, Ch. 66, L. 1919; re-en. Sec. 5133, R.C.M. 1921; amd. Sec. 15, Ch. 58, L. 1927; re-en. Sec. 5133, R.C.M. 1935; amd. Sec. 2, Ch. 73, L. 1939; amd. Sec. 2, Ch. 98, L. 1945; amd. Sec. 2, Ch. 56, L. 1963; amd. Sec. 6, Ch. 208, L. 1967; amd. Sec. 2, Ch. 267, L. 1973; amd. Sec. 2, Ch. 36, L. 1974; amd. Sec. 2, Ch. 299, L. 1974; amd. Sec. 1, Ch. 47, L. 1975; amd. Sec. 11, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1926; amd. Sec. 2, Ch. 446, L. 1983; Sec. 19-11-604, MCA 1991; redes. 19-18-604 by Code Commissioner, 1993.

19-18-605. Pensions to surviving spouses and children. (1) Each association shall pay, out of its disability and pension fund, a monthly pension to the surviving spouse or children of a deceased member of the association who on the date of his death was an active member of the fire department in the city or town in which the association was formed, who had elected to retire from active service in the fire department and receive a service pension as provided for by 19-18-602, or who, prior to death, had suffered a sickness or injury and was receiving or was qualified to receive a disability pension as provided by 19-18-604. The pension shall be equal to one-half of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for services rendered as an active member of the fire department in the city or town in which the association was formed.

(2) Effective July 1, 1974, if the deceased member had completed 20 years of service and had elected to serve additional years, the pension provided for in subsection (1) shall be increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for his services as an active member of the fire department.

(3) The monthly pension paid to the surviving spouse or children of an active member who dies after July 1, 1973, or an active member who elects to retire after July 1, 1973, must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to the surviving spouse or children of an active member who died prior to July 1, 1974, or who elected to retire before July 1, 1974, must be at least $200. In the case of a volunteer firefighter, the pension paid to a surviving spouse or children may not exceed the amount provided for a service pension for a volunteer firefighter under 19-18-602(3).

(4) A pension may be paid to the surviving spouse only so long as such spouse remains unmarried. A surviving spouse is not entitled to a pension under this section if the marriage was entered into after the firefighter had elected to retire from active service and had begun to receive a service pension as provided for by 19-18-602 or if the marriage was entered into after the firefighter had qualified for and had begun to receive a disability pension as provided for by 19-18-604. The pension provided for in this section may not be paid to the children of deceased firefighters after they have attained the age of 18.

History: En. Sec. 10, Ch. 129, L. 1911; re-en. Sec. 5134, R.C.M. 1921; amd. Sec. 16, Ch. 58, L. 1927; re-en. Sec. 5134, R.C.M. 1935; amd. Sec. 3, Ch. 73, L. 1939; amd. Sec. 3, Ch. 98, L. 1945; amd. Sec. 3, Ch. 56, L. 1963; amd. Sec. 7, Ch. 208, L. 1967; amd. Sec. 3, Ch. 267, L. 1973; amd. Sec. 3, Ch. 36, L. 1974; amd. Sec. 3, Ch. 299, L. 1974; amd. Sec. 5, Ch. 535, L. 1975; amd. Sec. 12, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1927; amd. Sec. 1, Ch. 82, L. 1987; Sec. 19-11-605, MCA 1991; redes. 19-18-605 by Code Commissioner, 1993.

Cross-References

PERS — survivorship benefits and death payments, Title 19, ch. 3, part 12.
Judges' retirement — survivorship benefits and death payments, Title 19, ch. 5, part 8.
Highway patrol retirement — survivorship benefits and death payments, Title 19, ch. 6, part 9.
Sheriffs' retirement — survivorship benefits and death payments, Title 19, ch. 7, part 9.
Game wardens' and peace officers' retirement — survivorship benefits and death payments, Title 19, ch. 8, part 10.
Police retirement — statewide plan — survivorship benefits and death payments, Title 19, ch. 9, part 11.
Firefighters' unified retirement — survivorship benefits and death payments, Title 19, ch. 13, part 9.
Volunteer Firefighters' Compensation Act — payment of medical and funeral expenses, 19-17-506.
Police retirement — local funds — death benefits, 19-19-503.
Teachers' retirement — allowances for death of member, 19-20-1001.

19-18-606. Repealed. Sec. 40, Ch. 532, L. 1997.

History: En. 11-1927.2 by Sec. 1, Ch. 32, L. 1975; amd. Sec. 14, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1927.2; amd. Sec. 3, Ch. 296, L. 1979; amd. Sec. 60, Ch. 566, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 27, Ch. 703, L. 1985; amd. Sec. 1, Ch. 454, L. 1989; Sec. 19-11-606, MCA 1991; redes. 19-18-606 by Code Commissioner, 1993.

19-18-607. Payment of death benefits in absence of spouse or child. If a firefighter dies without leaving a surviving spouse or child, the association shall compute the total contributions made to the fund by the deceased member, and if the deceased member had designated a beneficiary in writing to the association, the association shall issue a warrant for the amount of the total contributions payable to that beneficiary. If the deceased member had not nominated a beneficiary, the contributions shall be paid to his estate.

History: En. Sec. 1, Ch. 276, L. 1973; amd. Sec. 13, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1927.1; Sec. 19-11-607, MCA 1991; redes. 19-18-607 by Code Commissioner, 1993.

19-18-608 through 19-18-610 reserved.

19-18-611. Procedure — applying for and collecting benefits. (1) All applications for relief shall be referred to the board of trustees. All claims shall be referred to the board of trustees for allowance or disallowance, and claimant shall have the right to appeal to the association in the event the claim be disallowed.

(2) All claims shall be paid by warrant, duly authorized, drawn by the secretary and countersigned by the president of the association. On presentation of the warrant, the treasurer shall pay it out of the disability and pension fund.

History: (1)En. Sec. 7, Ch. 71, L. 1907; Sec. 3340, Rev. C. 1907; re-en. Sec. 5123, R.C.M. 1921; amd. Sec. 6, Ch. 58, L. 1927; re-en. Sec. 5123, R.C.M. 1935; amd. Sec. 3, Ch. 208, L. 1967; amd. Sec. 4, Ch. 535, L. 1975; Sec. 11-1915, R.C.M. 1947; (2)En. Sec. 11, Ch. 129, L. 1911; re-en. Sec. 5135, R.C.M. 1921; amd. Sec. 17, Ch. 58, L. 1927; amd. Sec. 1, Ch. 103, L. 1931; re-en. Sec. 5135, R.C.M. 1935; amd. Sec. 8, Ch. 208, L. 1967; amd. Sec. 2, Ch. 47, L. 1975; amd. Sec. 6, Ch. 535, L. 1975; amd. Sec. 15, Ch. 157, L. 1977; Sec. 11-1928, R.C.M. 1947; R.C.M. 1947, 11-1915(part), 11-1928(2); Sec. 19-11-611, MCA 1991; redes. 19-18-611 by Code Commissioner, 1993.

Cross-References

PERS — election of optional death annuity, 19-3-1203.

Volunteer Firefighters' Compensation Act — procedure for claiming funeral expenses, 19-17-503.

19-18-612. Protection of benefits from legal process and taxation — nonassignability. (1) Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, payments made or to be made under this chapter are not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may not assign the right, and the association and trustees may not recognize any assignment or pay over any sum assigned.

(2) The first $3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation.

History: En. Sec. 12, Ch. 129, L. 1911; re-en. Sec. 5136, R.C.M. 1921; re-en. Sec. 5136, R.C.M. 1935; amd. Sec. 16, Ch. 157, L. 1977; R.C.M. 1947, 11-1929; amd. Sec. 30, Ch. 114, L. 1979; amd. Sec. 14, Ch. 823, L. 1991; Sec. 19-11-612, MCA 1991; redes. 19-18-612 by Code Commissioner, 1993; amd. Sec. 17, Ch. 552, L. 1997.

Cross-References

Benefits tax-exempt, 15-30-111.

Residential property tax credit for elderly — partial exclusion of retirement benefits from income, 15-30-171.

The Public Employees' Retirement Act — exemption from taxes and legal process — exceptions, 19-2-1004.

Teachers' retirement — exemption from taxation and legal process — exceptions, 19-20-706.

University System optional retirement program — exemption from taxation, legal process, and assessments, 19-21-212.

Execution of judgment, Title 25, ch. 13.

Exempt property — bankruptcy proceeding, 31-2-106.

Exemption of benefits from liens of health care providers, 71-3-1118.

CHAPTER 19

POLICE RETIREMENT — LOCAL FUNDS

Part 1 — General Provisions

19-19-101. Definition.

Part 2 — Management of Police Retirement Funds

19-19-201. Local boards of trustees of funds.
19-19-202. Limit on use of fund.
19-19-203. Investment of fund.
19-19-204. Trustees' report to state auditor.
19-19-205. Actuarial valuation of police retirement fund.

Part 3 — Contributions to Funds

19-19-301. City's contribution to fund.
19-19-302. Officer's contribution deducted from salary.
19-19-303. Refund of officer's contribution.

19-19-304. Gifts and money to be applied to fund.
19-19-305. Annual state payments to municipality with police department.

Part 4 — Eligibility for Retirement Benefits

19-19-401. Eligibility for service retirement.
19-19-402. Eligibility for disability retirement.
19-19-403. Option of officer to remain on active list.
19-19-404. Reinstatement to retired list.
19-19-405. Credit for military service.
19-19-406. Election to qualify previous military service.

Part 5 — Benefits

19-19-501. Service retirement allowance.
19-19-502. Disability retirement allowance.
19-19-503. Death benefits.
19-19-504. Protection of benefits from legal process and taxation.
19-19-505. Withholding of group insurance premium from retirement benefit.
19-19-506. Supplement to certain pensions.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Municipal police force, Title 7, ch. 32, part 41.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
The Public Employees' Retirement Act — general provisions, Title 19, ch. 2.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement system, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Teachers' retirement, Title 19, ch. 20.

Part 1
General Provisions

19-19-101. Definition. Unless the context requires a different meaning, any reference to "municipality", "city", or "town" in this chapter includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

History: En. 11-1839.1 by Sec. 1, Ch. 489, L. 1977; R.C.M. 1947, 11-1839.1; Sec. 19-10-101, MCA 1991; redes. 19-19-101 by Code Commissioner, 1993.

Part 2
Management of Police Retirement Funds

19-19-201. Local boards of trustees of funds. (1) Each city or town that has a police retirement fund must have a board of trustees of the fund, except as provided in subsection (4).

(2) A board of trustees existing under subsection (1) must consist of the mayor, clerk, and attorney of the city or town and two members from the active list of police officers of the city or town.

(3) The two trustees who are also police officers shall serve terms of 2 years. They must be selected by a majority vote of the members of the police department on the active list of the city or town. One must be selected each year between May 1 and May 10, so that their terms are staggered. Immediately after the selection has been made, a certificate of election must be certified to the city clerk by the presiding officer of the board and secretary of the meeting at which the selection was made.

(4) The board of trustees of the police retirement fund of a city that elects to participate in the municipal police officers' retirement system under 19-9-207 is abolished as of the time that the transfer of the cash and securities and the certification required by that section is completed. The functions of the board are transferred as of the date of the election to the public employees' retirement board, as provided in the Municipal Police Officers' Retirement Act.

History: (1) thru (3)En. Sec. 12, Ch. 120, L. 1929; re-en. Sec. 5108.12, R.C.M. 1935; amd. Sec. 3, Ch. 224, L. 1977; Sec. 11-1828, R.C.M. 1947; (4)En. 82A-225, by Sec. 34, Ch. 456, L. 1977; Sec. 82A-225, R.C.M. 1947; R.C.M. 1947, 11-1828, 82A-225; amd. Sec. 15, Ch. 114, L. 1979; Sec. 19-10-201, MCA 1991; redes. 19-19-201 by Code Commissioner, 1993; amd. Sec. 94, Ch. 562, L. 1999.

Cross-References

Board of trustees continued — consolidation of local government, 7-3-1344.
Trust administration — powers of trustees, Title 72, ch. 34.

19-19-202. Limit on use of fund. (1) Except as provided in subsection (2), a police retirement fund may not be used for any purpose other than to make payments authorized by this chapter to members of the police department on the retired list and to make authorized investments.

(2) When a city or town no longer employs a police officer eligible to receive benefits paid from the city's or town's police retirement fund and when there are no retired police officers or beneficiaries eligible to receive benefits from the fund, the city or town shall dissolve the fund and pay to the state auditor, for deposit in the general fund, an amount proportional to the prior contributions made by the state under 19-19-305, as determined by the state auditor. Any remaining money in the fund must be transferred to the city or town general fund to be used by the city or town for any authorized city or town purpose.

History: En. Sec. 14, Ch. 120, L. 1929; re-en. Sec. 5108.14, R.C.M. 1935; amd. Sec. 5, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1830; amd. Sec. 16, Ch. 114, L. 1979; amd. Sec. 1, Ch. 460, L. 1985; amd. Sec. 64, Ch. 370, L. 1987; Sec. 19-10-202, MCA 1991; redes. 19-19-202 by Code Commissioner, 1993.

Cross-References

The Public Employees' Retirement Act — restrictions on use of funds, 19-2-505.
Teachers' retirement — restrictions on use of money, 19-20-502.

19-19-203. Investment of fund. (1) All money in the fund in excess of such an amount as is considered necessary from time to time to meet current payments to retired police officers shall be invested as hereinafter provided. All interest on money belonging to the fund from any source belongs to and must be paid into the fund.

(2) Whenever the money in the police retirement fund exceeds the greater of the following amounts, the city treasurer shall remit the excess to the state treasurer, who shall invest the remittances under the direction of the board of investments as provided in 17-6-204:

(a) 1 ½ times the monthly benefit paid in the preceding month; or

(b) $5,000.

(3) The funds deposited in the police retirement fund of a city or town after July 1, 1977, are limited to the investments in 17-6-211. However, these funds may be invested under the provisions of 17-6-204.

History: (1)En. Sec. 11, Ch. 120, L. 1929; re-en. Sec. 5108.11, R.C.M. 1935; Sec. 11-1827, R.C.M. 1947; (2)En. Sec. 13, Ch. 120, L. 1929; re-en. Sec. 5108.13, R.C.M. 1935; amd. Sec. 1, Ch. 84, L. 1971; amd. Sec. 1, Ch. 1, L. 1974; amd. Sec. 1, Ch. 128, L. 1974; amd. Sec. 16, Ch. 213, L. 1975; amd. Sec. 4, Ch. 224, L. 1977; Sec. 11-1829, R.C.M. 1947; (3)En. Sec. 3, Ch. 261, L. 1965; amd. Sec. 9, Ch. 335, L. 1974; amd. Sec. 6, Ch. 224, L. 1977; amd. Sec. 39, Ch. 456, L. 1977; Sec. 11-1836, R.C.M. 1947; R.C.M. 1947, 11-1827, 11-1829(2), (3), 11-1836(part); amd. Sec. 17, Ch. 114, L. 1979; amd. Sec. 3, Ch. 395, L. 1981; Sec. 19-10-203, MCA 1991; redes. 19-19-203 by Code Commissioner, 1993.

Cross-References

Housing authority bonds as legal investments, 7-15-4505.
The Public Employees' Retirement Act — general provisions — investment of pension trust funds, 19-2-504.
Firefighters' retirement — investment of fund by trustees, 19-18-402.
Firefighters' retirement — investment of fund by Board of Investments, 19-18-403.
Teachers' retirement — financial administration of money, 19-20-501.
Montana Health Facility Authority bonds — legal investment, 90-7-113.

19-19-204. Trustees' report to state auditor. The board of trustees of each police retirement fund shall on or before April 1 of each year report to the state auditor as to the financial condition of its fund.

History: En. Sec. 3, Ch. 261, L. 1965; amd. Sec. 9, Ch. 335, L. 1974; amd. Sec. 6, Ch. 224, L. 1977; amd. Sec. 39, Ch. 456, L. 1977; R.C.M. 1947, 11-1836(part); amd. Sec. 18, Ch. 114, L. 1979; Sec. 19-10-204, MCA 1991; redes. 19-19-204 by Code Commissioner, 1993.

Cross-References

State Auditor, Art. VI, sec. 1, Mont. Const.; 2-15-601.

19-19-205. Actuarial valuation of police retirement fund. (1) The city treasurer shall submit to the public employees' retirement board before October 1 of each odd-numbered year all information requested by the public employees' retirement board necessary to complete an actuarial valuation of the city's police retirement fund. The valuation must consider the actuarial soundness of the police retirement fund for the 2 preceding fiscal years.

(2) The valuation must be prepared by a qualified actuary selected by the public employees' retirement board. A qualified actuary is a member of the American academy of actuaries or of any organization considered by the department to have similar standards.

(3) In each fiscal year in which an actuarial valuation is prepared, the public employees' retirement board shall submit to the state treasurer a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed $6,000 in any fiscal year. The state treasurer shall make payment to the actuary from the general fund.

History: En. Sec. 13, Ch. 120, L. 1929; re-en. Sec. 5108.13, R.C.M. 1935; amd. Sec. 1, Ch. 84, L. 1971; amd. Sec. 1, Ch. 1, L. 1974; amd. Sec. 1, Ch. 128, L. 1974; amd. Sec. 16, Ch. 213, L. 1975; amd. Sec. 4, Ch. 224, L. 1977; R.C.M. 1947, 11-1829(1); amd. Sec. 1, Ch. 64, L. 1979; amd. Sec. 19, Ch. 114, L. 1979; amd. Sec. 22, Ch. 703, L. 1985; Sec. 19-10-205, MCA 1991; redes. 19-19-205 by Code Commissioner, 1993; amd. Sec. 28, Ch. 422, L. 1997; amd. Sec. 30, Ch. 532, L. 1997; amd. Sec. 95, Ch. 562, L. 1999.

Cross-References

The Public Employees' Retirement Act — employment of actuary — biennial investigation and valuation, 19-2-405.

Part 3
Contributions to Funds

Part Cross-References

Management and investment of pension trust funds, Title 19, ch. 2, part 5.
PERS — contributions, Title 19, ch. 3, part 3.
Judges' retirement — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-19-301. City's contribution to fund. Each city, other than one of the first or second class, that has a police retirement fund and that did not elect to join the statewide police reserve fund provided for in Chapter 335, Laws of 1974, and has not elected to participate in the plan under 19-9-207 shall deposit in its fund monthly an amount equal to 11% of the total salaries for the preceding month paid to active police officers of the city, exclusive of overtime and payments in lieu of sick leave and annual leave. If the demand against a city for deposits in its fund cannot be met, the city, subject to 15-10-420, may impose an additional levy in an amount that is sufficient to meet the demand.

History: En. Sec. 7, Ch. 100, L. 1927; amd. Sec. 7, Ch. 120, L. 1929; re-en. Sec. 5108.7, R.C.M. 1935; amd. Sec. 2, Ch. 78, L. 1937; amd. Sec. 1, Ch. 78, L. 1949; amd. Sec. 1, Ch. 8, L. 1959; amd. Sec. 6, Ch. 335, L. 1974; amd. Sec. 1, Ch. 224, L. 1977; amd. Sec. 35, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1823; amd. Sec. 20, Ch. 114, L. 1979; Sec. 19-10-301, MCA 1991; redes. 19-19-301 by Code Commissioner, 1993; amd. Sec. 114, Ch. 574, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 574 at end substituted "met, the city, subject to 15-10-420, may impose an additional levy in an amount that is sufficient to meet the demand" for "met within the general taxing authority of the city, an additional levy not to exceed 3 mills may be made until the general taxing authority is sufficient to meet the demand"; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Power to levy taxes for pension fund unaffected by law or Department of Public Safety, 7-3-4464.

19-19-302. Officer's contribution deducted from salary. The treasurer of an incorporated city which has a police retirement fund shall retain from the monthly salary of each police officer on the active list a sum equal to 6% of his monthly compensation for his services as a police officer, exclusive of overtime and payments made in lieu of sick leave and annual leave. The monthly deduction from the salaries of police officers must be paid into the city's police retirement fund for the purpose of paying the salaries of police officers on the retired list.

History: En. Sec. 9, Ch. 100, L. 1927; amd. Sec. 9, Ch. 120, L. 1929; amd. Sec. 1, Ch. 54, L. 1953; amd. Sec. 7, Ch. 335, L. 1974; amd. Sec. 2, Ch. 224, L. 1977; amd. Sec. 36, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1825; amd. Sec. 21, Ch. 114, L. 1979; Sec. 19-10-302, MCA 1991; redes. 19-19-302 by Code Commissioner, 1993.

Cross-References

Law enforcement reserve and auxiliary officers — participation prohibited, 7-32-202.
PERS — member's contribution deducted, 19-3-315.
Judges' retirement — member's contribution, 19-5-402.
Highway patrol retirement — member's contribution, 19-6-402.
Sheriffs' retirement — member's contributions deducted, 19-7-403.
Game wardens' and peace officers' retirement — member's contribution, 19-8-502.
Police retirement — statewide plan — member's contribution, 19-9-710.
Firefighters' unified retirement — member's contribution, 19-13-601.
Firefighters' retirement — contributions to fund, 19-18-501.
Teachers' retirement — annuity savings fund — member's contribution, 19-20-602.
Employer to furnish itemized statement of deductions, 39-3-101.

19-19-303. Refund of officer's contribution. A police officer whose service with the city has been discontinued by other than death or placement upon the retired list shall be entitled to the return to him of the amounts paid to the fund through deductions from his salary. If he has 10 years or more of service, the amount paid shall include regular interest on such amounts. If he has less than 10 years of service, he shall receive only the amount paid through such salary deductions, without interest.

History: En. 11-1847 by Sec. 17, Ch. 335, L. 1974; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1847; Sec. 19-10-303, MCA 1991; redes. 19-19-303 by Code Commissioner, 1993.

Cross-References

The Public Employees' Retirement Act — refund of member's contributions on termination of service, 19-2-602.
Judges' retirement — refunds in case of resignation or discharge, 19-5-403.
Firefighters' retirement — refund of firefighter's contribution, 19-18-502.
Teachers' retirement — withdrawal of accumulated contributions, 19-20-603.

19-19-304. Gifts and money to be applied to fund. The following shall be placed in the police retirement fund and transmitted promptly to the board of trustees:

(1) all money withheld from salaries of police officers for the violation of rules of the police department;

(2) all bequests, gifts, or emoluments paid or given on account of any extraordinary service of a member of the police department, except when specifically allowed to be retained by the officer by the mayor, commissioners, and chief of police; and

(3) all money derived from the provisions of this chapter.

History: En. Sec. 10, Ch. 100, L. 1927; amd. Sec. 10, Ch. 120, L. 1929; re-en. Sec. 5108.10, R.C.M. 1935; amd. Sec. 8, Ch. 335, L. 1974; amd. Sec. 37, Ch. 456, L. 1977; R.C.M. 1947, 11-1826; amd. Sec. 22, Ch. 114, L. 1979; Sec. 19-10-304, MCA 1991; redes. 19-19-304 by Code Commissioner, 1993.

Cross-References

Police retirement — statewide plan — other money credited as employer contributions, 19-9-705.
Firefighters' unified retirement — other money credited as employer contributions, 19-13-607.

19-19-305. Annual state payments to municipality with police department. (1) After the end of each fiscal year, the state auditor shall issue and deliver to the treasurer of each city and town in Montana that has a police department and that is not a participant in the municipal police officers' retirement system a warrant for an amount computed in the same manner as the amount paid (or that would be paid if an existing relief association met the legal requirements for payment) to cities and towns for fire department relief associations pursuant to 19-18-512. The payment from the general fund is statutorily appropriated as provided in 17-7-502.

(2) Each city or town that has a police retirement fund shall deposit the payment to the credit of its police retirement fund.

(3) Payments provided for in 19-19-205 and subsection (1) of this section are in addition to those provided for in 19-19-301.

History: (1)En. Sec. 1, Ch. 261, L. 1965; amd. Sec. 1, Ch. 229, L. 1975; amd. Sec. 38, Ch. 456, L. 1977; Sec. 11-1834, R.C.M. 1947; (2)En. Sec. 2, Ch. 261, L. 1965; amd. Sec. 2, Ch. 128, L. 1974; amd. Sec. 1, Ch. 230, L. 1975; Sec. 11-1835, R.C.M. 1947; (3), (4)En. Sec. 3, Ch. 261, L. 1965; amd. Sec. 9, Ch. 335, L. 1974; amd. Sec. 6, Ch. 224, L. 1977; amd. Sec. 39, Ch. 456, L. 1977; Sec. 11-1836, R.C.M. 1947; R.C.M. 1947, 11-1834, 11-1835, 11-1836(part); amd. Sec. 23, Ch. 114, L. 1979; amd. Sec. 3, Ch. 250, L. 1981; amd. Sec. 23, Ch. 703, L. 1985; Sec. 19-10-305, MCA 1991; redes. 19-19-305 by Code Commissioner, 1993; amd. Sec. 31, Ch. 532, L. 1997.

Cross-References

Expenditure of state payments by municipality not having police retirement system — annual report, 7-32-4120.
Police retirement — statewide plan — state contribution, 19-9-702.
Firefighters' unified retirement — state contribution, 19-13-604.
Volunteer Firefighters' Compensation Act — fire insurance premium tax to be paid into fund, 19-17-301.
Firefighters' retirement — State Auditor to pay association out of insurance premium taxes, 19-18-512.

Part 4
Eligibility for Retirement Benefits

Part Cross-References

PERS — service retirement, Title 19, ch. 3, part 9.
Judges' retirement — service retirement, Title 19, ch. 5, part 5.
Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.
Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.
Game wardens' and peace officers' retirement — service retirement, Title 19, ch. 8, part 6.
Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.
Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.
Volunteer Firefighters' Compensation Act — pension benefits, Title 19, ch. 17, part 4.
Firefighters' retirement — benefits, Title 19, ch. 18, part 6.
Teachers' retirement — superannuation retirement, Title 19, ch. 20, part 8.

19-19-401. Eligibility for service retirement. The following persons are eligible for the police retired list of a city and shall retire as provided in this section:

(1) A person who is employed by any city as a police officer on July 1, 1975, is eligible for the police retired list when he has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank.

(2) A person who is first employed by a city as a police officer after July 1, 1975, is eligible for the police retired list when he has reached the age of 50 and has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank.

History: En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(part); amd. Sec. 8, Ch. 86, L. 1985; Sec. 19-10-401, MCA 1991; redes. 19-19-401 by Code Commissioner, 1993.

19-19-402. Eligibility for disability retirement. When a police officer receives injuries or disabilities in the active discharge of his duties as a police officer, which injuries or disabilities are, in the opinion of the board of police commissioners or city council of the city or town, of such character as to impair his ability to discharge his duties as an active police officer, he shall be placed on the retired list of the city or town.

History: En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(1)(d); Sec. 19-10-402, MCA 1991; redes. 19-19-402 by Code Commissioner, 1993.

Cross-References

PERS — eligibility for disability retirement, 19-3-1002.
Police retirement — statewide plan — eligibility for disability retirement, 19-9-902.
Firefighters' unified retirement — eligibility for disability retirement, 19-13-802.
Volunteer Firefighters' Compensation Act — eligibility for medical and funeral expenses, 19-17-501.
Teachers' retirement — eligibility for disability retirement, 19-20-901.

19-19-403. Option of officer to remain on active list. (1) A police officer who is eligible for the retired list under subsection (1) or (2) of 19-19-401 may transfer, as of the time he becomes eligible, to the retired list or may elect to serve an additional 1 to 10 years as an active police officer.

(2) A police officer whose eligibility depends on 19-19-401(2) and who completes 20 years of service before reaching the age of 50 is considered to have elected to serve an additional year for each year between the completion of his 20th year of service and his 50th birthday, and he shall be paid the additional 1% for each such year.

History: (1)En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-1843, R.C.M. 1947; (2)En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(2), 11-1844(part); amd. Sec. 9, Ch. 86, L. 1985; Sec. 19-10-403, MCA 1991; redes. 19-19-403 by Code Commissioner, 1993.

19-19-404. Reinstatement to retired list. An applicant for reinstatement under the provisions of 7-32-4110 may be reinstated and passed into the retired list of police officers so as to enjoy all the benefits, pensions, and rights which accrue to police officers placed on the retired list in said city or town. The pension benefits to be allowed to such reinstated officer shall be computed upon the basis of his last full year of active service on said police force.

History: En. Sec. 2, Ch. 205, L. 1939; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1809; Sec. 19-10-404, MCA 1991; redes. 19-19-404 by Code Commissioner, 1993.

19-19-405. Credit for military service. A police officer serving in the United States military in time of war or national emergency shall be given credit in his police record for such service in the same manner as though he were on active police duty.

History: En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(part); Sec. 19-10-405, MCA 1991; redes. 19-19-405 by Code Commissioner, 1993.

19-19-406. Election to qualify previous military service. (1) A member with 15 years or more of service as a police officer may, at any time prior to his retirement, make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not otherwise eligible to receive credit. To qualify this service he must contribute to the account the actuarial cost of granting the service to be determined by the board based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more of his military service than he has service as a police officer in excess of 15 years. Military service purchased under this section may not be used in the determination of eligibility for a service retirement requiring a minimum of 20 years service.

(2) If a member has retired from active duty in the armed forces of the United States with normal service retirement benefits, he may not qualify his military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify his active military service under subsection (1) if his active duty in the armed forces of the United States is not more than 25% of the total of all his years of military service, including reserve and active duty time.

History: En. 11-1842.1 by Sec. 1, Ch. 368, L. 1977; R.C.M. 1947, 11-1842.1; amd. Sec. 24, Ch. 114, L. 1979; Sec. 19-10-406, MCA 1991; redes. 19-19-406 by Code Commissioner, 1993.

Cross-References

Veteran defined, 10-2-101.

Reemployment of public employee upon completion of military service, 10-2-221.

PERS — election to qualify military service, 19-3-503.

Highway patrol retirement — election to qualify military service, 19-6-801.

Sheriffs' retirement — election to qualify previous military service, 19-7-803.

Game wardens' and peace officers' retirement — election to qualify military service, 19-8-901.

Police retirement — statewide plan — election to qualify previous military service, 19-9-403.

Firefighters' unified retirement — election to qualify previous military service, 19-13-403.

Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-20-404.

Part 5
Benefits

19-19-501. Service retirement allowance. When a police officer is transferred from the active list to the retired list of a city, he shall thereafter receive monthly payments from the city's police retirement fund, as follows:

(1) A police officer who is eligible under 19-19-401(1) or (2) and does not elect to serve any additional years as an active police officer shall receive a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(2) A police officer who is eligible after 20 years of service and who elects to serve additional years shall receive the payment provided for in subsection (1) plus an additional 1% of such payment per year of additional service, up to a maximum of 60% of the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

History: En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1844(part); amd. Sec. 25, Ch. 114, L. 1979; amd. Sec. 10, Ch. 86, L. 1985; Sec. 19-10-501, MCA 1991; redes. 19-19-501 by Code Commissioner, 1993.

19-19-502. Disability retirement allowance. When a police officer is transferred from the active list to the retired list of a city, he shall thereafter receive monthly payments from the city's police retirement fund, as follows:

(1) A police officer who is eligible under 19-19-402 before completing 20 years of service shall receive a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(2) A police officer who is placed on the retired list under 19-19-402 and who, at the time of his injury or disability, was eligible at his option to be placed on the retired list under 19-19-401(1) or (2) but had elected to serve additional years and was then serving such additional years shall be paid for the additional years over his original eligibility at the rate prescribed in 19-19-501(2).

History: En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1844(part); amd. Sec. 26, Ch. 114, L. 1979; Sec. 19-10-502, MCA 1991; redes. 19-19-502 by Code Commissioner, 1993.

Cross-References

Disability benefits — exclusion from income tax, 15-30-111.
Disability defined, 19-2-303.
Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.

19-19-503. Death benefits. (1) Upon the death of a police officer on the active list or retired list of a city, his surviving spouse, if there is one, shall, as long as such spouse remains the surviving spouse, be paid from the city's police retirement fund a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(2) If the officer leaves one or more dependent minor children, upon his death if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, his surviving dependent minor children, collectively if there is more than one, shall receive the same monthly payments as a surviving spouse would receive, until they reach the age of 18 years or are married. The payments shall be made to their duly appointed, qualified, and acting guardian for their use. If there is more than one such child, upon each child reaching the age of 18 or marrying, the pro rata payments to that child shall cease and shall be made to the remaining children, until all the children have either reached the age of 18 or are married.

History: En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1844(2); amd. Sec. 27, Ch. 114, L. 1979; Sec. 19-10-503, MCA 1991; redes. 19-19-503 by Code Commissioner, 1993.

Cross-References

PERS — death benefits, Title 19, ch. 3, part 12.
Judges' retirement — payments upon employment-related death, 19-5-801.
Judges' retirement — payments upon death from other causes, 19-5-802.
Highway patrol retirement — payments upon employment-related death, 19-6-901.
Highway patrol retirement — payments upon death from other causes, 19-6-902.
Sheriffs' retirement — payments upon death before retirement, 19-7-901.
Game wardens' and peace officers' retirement — death benefits, 19-8-1001, 19-8-1002.
Police retirement — statewide plan — preretirement death benefits, 19-9-1101.
Firefighters' unified retirement — survivorship benefits and death payments, Title 19, ch. 13, part 9.
Volunteer Firefighters' Compensation Act — payment of medical and funeral expenses, 19-17-506.
Firefighters' retirement — death benefits, 19-18-605, 19-18-607.
Teachers' retirement — death benefits, Title 19, ch. 20, part 10.
Group life insurance for public employees authorized, 33-20-1104.

19-19-504. Protection of benefits from legal process and taxation. (1) Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, the benefits provided for in this part are not subject to execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law and are unassignable except as specifically provided in 19-19-505.

(2) The first $3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation.

History: En. 11-1845 by Sec. 15, Ch. 335, L. 1974; amd. Sec. 1, Ch. 214, L. 1977; amd. Sec. 13, Ch. 224, L. 1977; R.C.M. 1947, 11-1845; amd. Sec. 13, Ch. 823, L. 1991; Sec. 19-10-504, MCA 1991; redes. 19-19-504 by Code Commissioner, 1993; amd. Sec. 18, Ch. 552, L. 1997.

Cross-References

Benefits tax-exempt, 15-30-111.
Residential property tax credit for elderly — partial exclusion of retirement benefits from income, 15-30-171.
The Public Employees' Retirement Act — general provisions — exemption from taxes and legal process — exceptions, 19-2-1004.
Teachers' retirement — exemption from taxes and legal process — exceptions, 19-20-706.
Execution of judgment, Title 25, ch. 13.
Exempt property — bankruptcy proceeding, 31-2-106.
Exemption of benefits from liens of health care providers, 71-3-1118.

19-19-505. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the department of administration and paid directly by the department to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: En. 11-1845.1 by Sec. 2, Ch. 214, L. 1977; R.C.M. 1947, 11-1845.1; Sec. 19-10-505, MCA 1991; redes. 19-19-505 by Code Commissioner, 1993.

Cross-References

The Public Employees' Retirement Act — withholding of group insurance premium from retirement benefit, 19-2-904.
Payments to volunteer fire companies maintaining supplemental insurance, 19-17-103.
Group life insurance for public employees authorized, 33-20-1104.

19-19-506. Supplement to certain pensions. (1) The payment for each fiscal year to the police officers, spouses, or minor children described in subsections (2)(a) through (2)(c) may not be less than one-half of the salary paid in that fiscal year in the appropriate city or town to newly confirmed police officers.

(2) On or before April 1 of each year, the board of trustees shall make a report to the state auditor including the following information:

(a) the names of all police officers who are receiving payments from the police retirement fund of the city or town as of the date of the report and who were receiving the payments prior to July 1, 1975;

(b) the names of all spouses or minor children who are receiving payments from the police retirement fund because of the death of a police officer who was receiving payments prior to July 1, 1975;

(c) the names of all spouses or minor children who are receiving payments from the police retirement fund and who were receiving payments prior to July 1, 1975, or in the case of minor children, whose parent, the spouse of a police officer, was receiving payments prior to July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection (4), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

(ii) the amount of the payments made in the base fiscal year to each spouse or minor child described in subsection (2)(b) or (2)(c);

(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from the police retirement fund prior to July 1, 1975, and who is survived by a spouse or minor child entitled to receive payments from the police retirement fund, the amount that would have been paid to an eligible spouse of the police officer if that spouse had been receiving payments in the base fiscal year.

(3) Each fiscal year immediately after the adoption by a city or town having a police retirement fund of its budget for that fiscal year, the city or town shall report to the state auditor the salary for that fiscal year of a newly confirmed police officer of that city or town.

(4) The state auditor shall, upon receipt of the reports referred to in subsections (2) and (3), compute the difference between each amount reported under subsections (2)(d)(i) through (2)(d)(iii) and one-half the salary for the current fiscal year of a newly confirmed police officer of the appropriate city or town. The difference must be paid by the state auditor out of the general fund to the treasurer of the appropriate city or town at the same time as and in addition to the payment to be made by the state auditor under 19-19-305(1). The payment is statutorily appropriated as provided in 17-7-502.

(5) The treasurer of each city or town receiving funds under subsection (4) shall immediately deposit them to the credit of the city or town's police retirement fund. The board of trustees of the fund shall use the funds to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(6) If more than one minor child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to the minor children under this section must be determined as if there were one minor child and the supplementary payment must be made to the minor children collectively.

History: En. 11-1846.1 by Sec. 2, Ch. 406, L. 1977; R.C.M. 1947, 11-1846.1(part); amd. Sec. 28, Ch. 114, L. 1979; amd. Sec. 24, Ch. 703, L. 1985; Sec. 19-10-506, MCA 1991; redes. 19-19-506 by Code Commissioner, 1993; amd. Sec. 32, Ch. 532, L. 1997.

Cross-References

PERS — adjustment of benefit for certain members, 19-3-905.
Highway patrol retirement — supplemental benefits for certain retirees, 19-6-709.
Police retirement — statewide plan — supplement to certain benefits, 19-9-1007.

CHAPTER 20

TEACHERS' RETIREMENT

Part 1 — General Provisions

19-20-101. Definitions.
19-20-102. Retirement system.
19-20-103. Implied consent of employee.
19-20-104. Guarantee by state.
19-20-105. Penalty for fraud.
19-20-106. Retaining qualified plan status — board rulemaking authority.

Part 2 — Administration of System

19-20-201. Administration by retirement board.

19-20-202. Per diem and expenses of board members.
19-20-203. Officers and employees of retirement board.
19-20-204. Board's policy governing creditable service.
19-20-205. Board to determine membership.
19-20-206. Board to grant benefits.
19-20-207. Repealed.
19-20-208. Duties of employer.
19-20-209 through 19-20-211 reserved.
19-20-212. General internal revenue service qualification rules.

Part 3 — Membership

19-20-301. Membership application.
19-20-302. Active membership.
19-20-303. Inactive membership.
19-20-304. Membership termination.
19-20-305. Alternate payees — family law orders.
19-20-306. Execution or withholding for support obligation.

Part 4 — Creditable Service

19-20-401. Creditable service.
19-20-402. Creditable service for employment in out-of-state public and federal schools.
19-20-403. Creditable service for employment while on leave.
19-20-404. Creditable service for active service in military, red cross, or merchant marine.
19-20-405. Limit on creditable service that may be awarded.
19-20-406. Creditable service for prior service.
19-20-407. No duplication of credit for same period of service.
19-20-408. Creditable service for employment in private schools.
19-20-409. Transfer of service credits and contributions from public employees' retirement system.
19-20-410. Creditable service for extension service employment.
19-20-411. Absence because of employment-related injury.
19-20-412. Repealed.
19-20-413. Repealed.
19-20-414. Rollover or transfer of accumulated contributions.
19-20-415. Procedure for purchase of service credit and pick up.
19-20-416. Credit for legislative service required.
19-20-417. Credit for substitute teaching service, teacher's aide service, or other service not reported.

Part 5 — Management of Funds

19-20-501. Financial administration of money.
19-20-502. Restrictions on use of money.
19-20-503. Transfer of dormant or unclaimed accounts.
19-20-504. Vesting of retirement allowances upon termination of system.
19-20-505 through 19-20-509 reserved.
19-20-510. Probate and nonprobate transfer statutes superseded.

Part 6 — Funds—Contributions

19-20-601. Method of financing.
19-20-602. Annuity savings fund — member's contribution.
19-20-603. Withdrawal of accumulated contributions — options.
19-20-604. State contributions — termination.
19-20-605. Pension accumulation fund — employer's contribution.
19-20-606. Repealed.
19-20-607 through 19-20-620 reserved.
19-20-621. Montana university system optional retirement program supplemental contributions.
19-20-622. Renumbered 19-20-720.

Part 7 — Benefits in General

19-20-701. Benefits.
19-20-702. Optional allowances.
19-20-703. Payments to be monthly.
19-20-704. Repealed.
19-20-705. Correction of erroneous payments.
19-20-706. Exemption from taxation and legal process.
19-20-707. Repealed.
19-20-708. Repealed.
19-20-709. Repealed.
19-20-710. Maximum benefit limitation.
19-20-711. Repealed.

19-20-712. Repealed.
19-20-713. Repealed.
19-20-714. Repealed.
19-20-715. Compensation limit.
19-20-716. Termination pay.
19-20-717. Effect of no designation or no surviving beneficiary.
19-20-718. Maximum contribution limitation.
19-20-719. Guaranteed annual benefit adjustment — rulemaking.
19-20-720. Minimum monthly benefit allowance.
19-20-721. Designation of beneficiary.

Part 8 — Superannuation Retirement

19-20-801. Eligibility for service retirement.
19-20-802. Early retirement.
19-20-803 reserved.
19-20-804. Allowance for service retirement.
19-20-805. Earned compensation — part-time service.

Part 9 — Disability Retirement

19-20-901. Eligibility for disability retirement — determination by board.
19-20-902. Allowance for disability retirement.
19-20-903. Medical examination of disability retiree.
19-20-904. Adjustment of allowance.
19-20-905. Cancellation of allowance and restoration of membership.

Part 10 — Death Benefits

19-20-1001. Allowances for death of member.
19-20-1002. Payments upon death of retiree.
19-20-1003. Payment of death benefits.

Part 11 — Group Insurance

19-20-1101. Withholding of group insurance premium from retirement allowance.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement system, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
University System optional retirement program, Title 19, ch. 21.
Education, Title 20.
Teachers, superintendents, and principals, Title 20, ch. 4.

Part 1
General Provisions

19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings fund, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Average final compensation" means the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the

highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b).

(4) "Beneficiary" means one or more persons formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

(5) "Creditable service" is that service defined by 19-20-401.

(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not mean:

(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar payment for any form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

(iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include:

(i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code;

(ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in excess of that normally allowed; or

(iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.

(7) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state that employs a person who is designated a member of the retirement system.

(8) "Full-time service" means service that is full-time and that extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, full-time service means service that is full-time and that totals at least 9 months in any year.

(9) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a governmental plan, as the code provided on July 1, 1999.

(10) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(11) "Normal retirement age" means an age no earlier than the age at which the member is eligible to retire:

(a) by virtue of age, length of service, or both;

(b) without disability; and

(c) with the right to receive immediate retirement benefits without actuarial or similar reduction in the benefits because of retirement before a specified age.

(12) "Part-time service" means service that is less than full-time or that totals less than 180 days in a normal academic year. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

(13) "Prior service" means employment of the same nature as service but rendered before September 1, 1937.

(14) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

(15) "Retired member" means a person who has terminated employment that qualified the person for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.

(16) "Retirement allowance" means a monthly payment due to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.

(17) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

(18) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

(19) "Service" means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(20) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

(21) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment and on which employee and employer contributions have been paid as required by 19-20-716.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code.

(22) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602 and 19-20-605, and who has a right to a future retirement benefit.

(23) "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed, and filed with the board, that contains all the required information, including documentation that the board considers necessary.

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part); amd. Sec. 1, Ch. 446, L. 1981; amd. Sec. 1, Ch. 453, L. 1983; amd. Sec. 1, Ch. 224, L. 1985; amd. Sec. 6, Ch. 464, L. 1985; amd. Sec. 2, Ch. 45, L. 1987; amd. Sec. 1, Ch. 56, L. 1989; amd. Sec. 1, Ch. 331, L. 1989; amd. Sec. 2, Ch. 13, L. 1991; Sec. 19-4-101, MCA 1991; redes. 19-20-101 by Code Commissioner, 1993; amd. Sec. 2, Ch. 111, L. 1995; amd. Sec. 5, Ch. 442, L. 1997; amd. Sec. 2, Ch. 111, L. 1999; amd. Sec. 2, Ch. 45, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 45 in definition of actuarial equivalent after "computed" substituted "upon" for "with regular interest, on" and at end substituted "mortality table and interest rate assumption set by the retirement board" for "1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually"; in definition of beneficiary near beginning substituted "one or more persons" for "a person"; in definition of earned compensation inserted (e)(ii) excluding sick, annual, or other types of leave and inserted (e)(iii) excluding incentive or bonus payments; inserted definition of normal retirement age; in definition of part-time service substituted "180 days" for "9 months"; in definition of regular interest after "means interest" deleted "at 4% a year compounded annually or";

in definition of retired member substituted "qualified the person" for "is eligible"; in definition of retirement allowance substituted "monthly payment due" for "payment due monthly"; in definition of termination pay at end inserted "and on which employee and employer contributions have been paid as required by 19-20-716"; in definition of written application near beginning inserted "or "written election"" and substituted "required by statute or the rules of the board" for "specified by the board"; and made minor changes in style. Amendment effective March 16, 2001.

Cross-References

Supplemental Social Security coverage for teachers — referendum by school district, 19-1-811.
Community college teachers eligible for retirement system benefits, 20-15-106.

19-20-102. Retirement system. The state teachers' retirement system created under the provisions of Chapter 87, Laws of 1937, is hereby recognized as the state teachers' retirement system of the state of Montana, and no provisions of this chapter shall affect or impair the validity of any action taken by its governing board or the rights of any person arising under the provisions of Chapter 87, Laws of 1937, or any subsequent amendment thereto. Such state teachers' retirement system shall be known as "The Teachers' Retirement System of the State of Montana" and in that name shall transact all business of the retirement system, hold its assets in trust, and have such powers and privileges of a corporation that may be necessary to carry into effect the provisions of this chapter.

History: En. 75-6202 by Sec. 97, Ch. 5, L. 1971; amd. Sec. 22, Ch. 326, L. 1974; R.C.M. 1947, 75-6202; Sec. 19-4-102, MCA 1991; redes. 19-20-102 by Code Commissioner, 1993.

Cross-References

Social Security coverage not to prejudice retirement rights, 19-1-802.
Retirement system to be considered separate for each institution, 19-1-821.

19-20-103. Implied consent of employee. A person who accepts employment for which membership is required is considered to have consented to membership and to the withholding of contributions from his compensation.

History: En. 75-6214 by Sec. 109, Ch. 5, L. 1971; amd. Sec. 10, Ch. 127, L. 1977; amd. Sec. 8, Ch. 331, L. 1977; R.C.M. 1947, 75-6214(part); Sec. 19-4-103, MCA 1991; redes. 19-20-103 by Code Commissioner, 1993.

Cross-References

Consent in general, Title 28, ch. 2, part 3.
Implied acceptance, 28-2-503.

19-20-104. Guarantee by state. Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation fund, and the maintenance of accumulated contributions in the annuity savings fund, as provided for in this chapter, and the payment of all retirement allowances, refunds, and other benefits granted under the retirement system are obligations of the state of Montana.

History: En. 75-6216 by Sec. 111, Ch. 5, L. 1971; amd. Sec. 11, Ch. 127, L. 1977; amd. Sec. 9, Ch. 331, L. 1977; R.C.M. 1947, 75-6216; Sec. 19-4-104, MCA 1991; redes. 19-20-104 by Code Commissioner, 1993; amd. Sec. 6, Ch. 442, L. 1997.

Cross-References

Guaranty, Title 28, ch. 11, parts 1 and 2.

19-20-105. Penalty for fraud. A person who knowingly makes a false statement or who falsifies or permits to be falsified any record of the retirement system in an attempt to defraud the system is guilty of a misdemeanor and is punishable as provided by law.

History: En. 75-6217 by Sec. 112, Ch. 5, L. 1971; amd. Sec. 12, Ch. 127, L. 1977; R.C.M. 1947, 75-6217(1); Sec. 19-4-105, MCA 1991; redes. 19-20-105 by Code Commissioner, 1993.

Cross-References

The Public Employees' Retirement Act — penalty for fraud, 19-2-1009.
Volunteer Firefighters' Compensation Act — penalty for false statements or claims, 19-17-104.
What constitutes actual fraud, 28-2-405.
What constitutes constructive fraud, 28-2-406.
Misdemeanor — no penalty specified, 46-18-212.

19-20-106. Retaining qualified plan status — board rulemaking authority. (1) The board shall administer the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as specified in the Internal Revenue Code. If a provision in this chapter conflicts with a qualification requirement in section 401 of the Internal Revenue Code applicable to public retirement systems or with the plan's status as a qualified governmental plan under section 414(d) of the Internal Revenue Code and consequent federal administrative regulations, the provision is either ineffective or must be interpreted to conform to the federal qualification requirements and allow the plan to retain tax-deferred status. The board may adopt rules to implement this section.

(2) For the purpose of section 401(a) of the Internal Revenue Code, the plan document for the retirement plan is composed of the applicable provisions of the Montana constitution, this chapter, and applicable rules adopted by the board.

History: En. Sec. 3, Ch. 442, L. 1997; amd. Sec. 3, Ch. 111, L. 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 2

Administration of System

Part Cross-References

The Public Employees' Retirement Act — general provisions — administration of retirement systems, Title 19, ch. 2, part 4.

Volunteer Firefighters' Compensation Act — administration of fund, Title 19, ch. 17, part 2.

University System optional retirement program — administration, Title 19, ch. 21, part 1.

Discrimination in insurance and retirement plans, 49-2-309.

19-20-201. Administration by retirement board. (1) The retirement board shall administer and operate the retirement system within the limitations prescribed by this chapter, and it is the duty of the retirement board to:

(a) establish rules necessary for the proper administration and operation of the retirement system;

(b) approve or disapprove all expenditures necessary for the proper operation of the retirement system;

(c) keep a record of all its proceedings, which must be open to public inspection;

(d) submit a report to the office of budget and program planning as a part of the information required by 17-7-111, detailing the fiscal transactions for the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system;

(e) keep in convenient form the data that is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;

(f) prepare an annual valuation of the assets and liabilities of the retirement system;

(g) prescribe a form for membership application that will provide adequate and necessary information for the proper operation of the retirement system;

(h) annually determine the rate of regular interest as prescribed in 19-20-501;

(i) establish and maintain the funds of the retirement system in accordance with the provisions of part 6 of this chapter; and

(j) perform other duties and functions as are required to properly administer and operate the retirement system.

(2) The board may send retirement-related material to employers and the campuses of the Montana university system for delivery to employees. To facilitate distribution, employers and those campuses shall each provide the board with a point of contact who is responsible for distribution of the material provided by the board.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(1), (5) thru (7), (9), (11), (13), (16) thru (18); amd. Sec. 25, Ch. 112, L. 1991; amd. Sec. 25, Ch. 349, L. 1993; Sec. 19-4-201, MCA 1991; redes. 19-20-201 by Code Commissioner, 1993; amd. Sec. 3, Ch. 45, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 45 inserted (2) authorizing board to send certain material for delivery to employees and requiring employers to provide board with point of contact; and made minor changes in style. Amendment effective March 16, 2001.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Teachers' Retirement Board, 2-15-1010.

Representation on Board of Investments, 2-15-1808.

Administration of retirement systems, Title 19, ch. 2, part 4.

University System optional retirement program — Board of Regents — authority to establish, 19-21-101.
Superintendent of Public Instruction to be on Teachers' Retirement Board, 20-3-106.

19-20-202. Per diem and expenses of board members. The members of the retirement board shall serve without direct or indirect compensation except that each appointed member shall receive $50 per day and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day in attendance at the meetings of such board or in the execution of his duties as a member of the retirement board. All per diem and expenses paid under the provisions of this section shall be paid from the expense fund of the retirement system.

History: En. 75-6204 by Sec. 99, Ch. 5, L. 1971; amd. Sec. 1, Ch. 507, L. 1973; amd. Sec. 51, Ch. 439, L. 1975; R.C.M. 1947, 75-6204; amd. Sec. 3, Ch. 672, L. 1983; Sec. 19-4-202, MCA 1991; redes. 19-20-202 by Code Commissioner, 1993.

Cross-References

PERS — compensation and expenses of Board members, 19-2-402.

19-20-203. Officers and employees of retirement board. (1) It is the duty of the retirement board to:

(a) elect a presiding officer from its membership;

(b) appoint a secretary, who may be one of its members;

(c) employ technical or administrative employees who are necessary for the transaction of the business of the retirement system and establish their compensation pursuant to Title 2, chapter 18; and

(d) designate an actuary who meets the qualifications established by the retirement board to assist the retirement board with the technical actuarial aspects of the operation of the retirement system, which includes establishing mortality and service tables and making an actuarial investigation at least once every 5 years into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system.

(2) A quorum of the board is three members.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(2) thru (4), (8), (10); amd. Sec. 1, Ch. 24, L. 1987; amd. Sec. 1, Ch. 490, L. 1987; Sec. 19-4-203, MCA 1991; redes. 19-20-203 by Code Commissioner, 1993; amd. Sec. 3, Ch. 111, L. 1995; amd. Sec. 33, Ch. 532, L. 1997.

Cross-References

PERS — powers and duties of Board, 19-2-403.
PERS — employment of actuary, 19-2-405.

19-20-204. Board's policy governing creditable service. It is the duty of the retirement board to adopt policies for the determination of creditable service in the retirement system implementing the following guidelines:

(1) One year's creditable service shall be awarded for each year of full-time service, outside of vacation periods, but no more than 1 year's creditable service shall be awarded for service during the same school fiscal year.

(2) Not more than 1 month's creditable service shall be awarded for 1 or more continuous months of absence without pay.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(14); Sec. 19-4-204, MCA 1991; redes. 19-20-204 by Code Commissioner, 1993.

Cross-References

PERS — service credit, Title 19, ch. 2, part 7.

19-20-205. Board to determine membership. It is the duty of the retirement board to determine the eligibility of a person to become a member of the retirement system in accordance with the provisions of 19-20-302.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(12); Sec. 19-4-205, MCA 1991; redes. 19-20-205 by Code Commissioner, 1993.

Cross-References

PERS — membership, 19-3-401.
Judges' retirement — membership, 19-5-301.
Highway patrol retirement — membership, 19-6-301.
Sheriffs' retirement — membership, 19-7-301.
Game wardens' and peace officers' retirement — membership, 19-8-301.
Police retirement — statewide plan — membership, 19-9-301.
Firefighters' unified retirement — membership, 19-13-301.

University System optional retirement program — duties of Board of Regents, 19-21-103.

19-20-206. Board to grant benefits. It is the duty of the retirement board to grant retirement, disability, and other benefits under the provisions of this chapter. However, benefits will be granted only if the board decides, in its discretion as limited by law, that an applicant for benefits is entitled to those benefits. All applicants who are in similar circumstances must be treated alike.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(15); Sec. 19-4-206, MCA 1991; redes. 19-20-206 by Code Commissioner, 1993; amd. Sec. 4, Ch. 45, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 45 inserted second and third sentences regarding granting of benefits by board. Amendment effective March 16, 2001.

19-20-207. Repealed. Sec. 11, Ch. 111, L. 1995.

History: En. 75-6219 by Sec. 7, Ch. 507, L. 1973; R.C.M. 1947, 75-6219; Sec. 19-4-207, MCA 1991; redes. 19-20-207 by Code Commissioner, 1993.

19-20-208. Duties of employer. Each employer shall:

(1) pick up the contribution of each employed member at the rate prescribed by 19-20-602 and transmit the contribution each month to the executive director of the retirement board;

(2) transmit to the executive director of the retirement board the employer's contribution prescribed by 19-20-605, at the time that the employee contributions are transmitted;

(3) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(4) upon the employment of a person who is required to become a member of the retirement system, inform the person of the rights and obligations relating to the retirement system;

(5) whenever applicable, inform an employee of the right to elect to participate in the optional retirement program under Title 19, chapter 21;

(6) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system;

(7) notify the retirement board of the employment of a person eligible for membership and forward the person's membership application to the board;

(8) if the employer has converted to earned compensation amounts excluded from earned compensation, for each retiring member, certify to the board the amounts reported to the system in each of the 5 years preceding the member's retirement.

History: En. 75-6214 by Sec. 109, Ch. 5, L. 1971; amd. Sec. 10, Ch. 127, L. 1977; amd. Sec. 8, Ch. 331, L. 1977; R.C.M. 1947, 75-6214(part); amd. Sec. 5, Ch. 464, L. 1985; amd. Sec. 11, Ch. 494, L. 1987; Sec. 19-4-208, MCA 1991; redes. 19-20-208 by Code Commissioner, 1993; amd. Sec. 7, Ch. 442, L. 1997.

Cross-References

PERS — duties of employer, 19-3-315.
PERS — employer contributions, 19-3-316.
Judges' retirement — duties of employer, 19-5-402.
Highway patrol retirement — duties of employer, 19-6-402.
Sheriffs' retirement — duties of employer, 19-7-403.
Game wardens' and peace officers' retirement — duties of employer, 19-8-502.
Police retirement — statewide plan — duties of employer, 19-9-710.
Firefighters' unified retirement — duties of employer, 19-13-601.

19-20-209 through 19-20-211 reserved.

19-20-212. *(Effective on later of occurrence of contingency or July 1, 1999)* **General internal revenue service qualification rules.** (1) The board shall distribute the corpus and income of the system to the members and their beneficiaries in accordance with the system's law. The corpus and income may not, at any time before the satisfaction of all liabilities with respect to members and their beneficiaries, be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries.

(2) Forfeitures arising from severance of employment, from death, or for any other reason may not be applied to increase the benefits that any member would otherwise receive under the state's law. However, forfeitures may be used to reduce the costs of administration.

(3) Distributions from the system may be made only upon retirement, separation from service, disability, or death.

(4) Notwithstanding any provision of law to the contrary, contributions, benefits, and service credit with respect to qualified military service must be provided in accordance with section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq.

(5) The board may maintain a qualified governmental excess benefit arrangement under section 415(m) of the Internal Revenue Code. The board shall adopt rules for the necessary and appropriate procedures for the administration of the benefit arrangement in accordance with the Internal Revenue Code. The amount of any annual benefit that would exceed the limitations imposed by section 415 of the Internal Revenue Code must be paid from the benefit arrangement. The amount of a contribution that would exceed the limitation imposed by section 415 of the Internal Revenue Code must be credited to the benefit arrangement. The benefit arrangement must be a separate part of the system. The benefit arrangement is subject to the following requirements:

(a) The benefit arrangement must be maintained solely for the purpose of providing to members in the system that part of the member's annual benefit or contribution otherwise payable under the terms of this chapter that exceeds the limitations on benefits or contributions imposed by section 415 of the Internal Revenue Code.

(b) Members may not elect, directly or indirectly, to defer compensation to the benefit arrangement.

(6) The limitation year for purposes of section 415 of the Internal Revenue Code is the school year beginning September 1 and ending August 31.

(7) The plan year is the fiscal year beginning July 1 and ending June 30.

History: En. Sec. 4, Ch. 111, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 29(2), Ch. 111, L. 1999, provided: "The provisions in [sections 4 and 19] [19-20-212 and 19-20-718], providing for the creation and use of an excess benefit arrangement, are effective on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation and use of the excess benefit arrangement provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan."

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3
Membership

Part Cross-References

PERS — membership, Title 19, ch. 3, part 4.
Judges' retirement — membership, Title 19, ch. 5, part 3.
Highway patrol retirement — membership, Title 19, ch. 6, part 3.
Sheriffs' retirement — membership, Title 19, ch. 7, part 3.
Game wardens' and peace officers' retirement — membership, Title 19, ch. 8, part 3.
Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.
Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.
University System optional retirement program — participation, 19-21-201.

19-20-301. Membership application. Whenever a person becomes a member of the retirement system as required by 19-20-302, he shall complete an application form prescribed by the retirement board.

History: En. 75-6212 by Sec. 107, Ch. 5, L. 1971; amd. Sec. 5, Ch. 507, L. 1973; amd. Sec. 8, Ch. 127, L. 1977; amd. Sec. 7, Ch. 331, L. 1977; R.C.M. 1947, 75-6212(1); Sec. 19-4-301, MCA 1991; redes. 19-20-301 by Code Commissioner, 1993.

19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system:

(a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;

(c) a person employed as a speech-language pathologist, school nurse, or school psychologist or in a teaching capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) a person who is an administrative officer or a member of the instructional staff of the board of public education; and

(e) the superintendent of public instruction or a person employed in an instructional services capacity by the office of public instruction.

(2) A person elected to the office of county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and may, within 30 days of taking office, elect to become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher or a part-time teacher's aide:

(i) shall file an irrevocable written election determining whether to become an active member of the retirement system on the first day of employment; or

(ii) is required to become an active member of the retirement system after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(a)(i).

(b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.

(c) A person employed as a substitute teacher on July 1, 1999, who has not elected to become a member by that date shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a substitute in the next school year after July 1, 1999.

(d) A person employed as a part-time teacher's aide on July 1, 2001, who is not a member of the retirement system shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a part-time teacher's aide after July 1, 2001.

(e) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the first day of employment of the option to elect membership under subsection (4)(a)(i).

(f) If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.

(5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in 19-20-804.

(6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike.

(7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours a day assisting a certified teacher in a classroom.

History: En. 75-6209 by Sec. 104, Ch. 5, L. 1971; amd. Sec. 6, Ch. 127, L. 1977; amd. Sec. 6, Ch. 331, L. 1977; R.C.M. 1947, 75-6209; amd. Sec. 1, Ch. 221, L. 1981; amd. Sec. 1, Ch. 210, L. 1983; amd. Sec. 1, Ch. 22, L. 1987; amd. Sec. 1, Ch. 296, L. 1987; amd. Sec. 12, Ch. 494, L. 1987; amd. Sec. 6, Ch. 658, L. 1987; amd. Sec. 2, Ch. 56, L. 1989; amd. Sec. 1, Ch. 178, L. 1993; Sec. 19-4-302, MCA 1991; redes. 19-20-302 by Code Commis-

sioner, 1993; amd. Sec. 4, Ch. 111, L. 1995; amd. Sec. 10, Ch. 308, L. 1995; amd. Sec. 108, Ch. 42, L. 1997; amd. Sec. 5, Ch. 111, L. 1999; amd. Sec. 5, Ch. 45, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 45 in (1) after "the retirement system" deleted former exception that read: "with the exception that those persons who became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members"; in (1)(c) near beginning substituted "a teaching capacity" for "an instructional services capacity"; deleted former (1)(e) and (1)(f) that read: "(e) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by subsection (1)(a), (1)(b), (1)(c), or (1)(d);

(f) any person who has elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by subsection (1)(a), (1)(b), (1)(c), or (1)(d) since the time of the election, and who may elect to become a member of the retirement system"; inserted (1)(e) regarding superintendent of public instruction or another person; in (4)(a) inserted reference to part-time teacher's aide; in (4)(a)(i) substituted "shall file" for "shall make" and after "irrevocable" inserted "written"; in (4)(a)(ii) near middle substituted "after completing 210 hours" for "on the 31st day" and after "substitute teacher" inserted "or part-time teacher's aide"; inserted (4)(b) regarding membership by part-time teacher's aid and substitute teacher; in (4)(c) near middle substituted "shall file" for "shall make" and after "irrevocable" inserted "written"; inserted (4)(d) concerning irrevocable election by part-time teacher's aide; in (4)(e) near middle inserted reference to part-time teacher's aide; in (4)(f) in two places inserted reference to part-time teacher's aide and after "a written statement" inserted "with the employer"; inserted (5) concerning membership of school district clerk or business official in teachers' retirement system; in (7) inserted definition of part-time teacher's aide; and made minor changes in style. Amendment effective March 16, 2001.

Cross-References

Legislators — continued participation, 5-2-304.
University System optional retirement program, Title 19, ch. 21.
University System optional retirement program — effect on rights under teachers' retirement system, 19-21-202.
Community college district nonteaching employees — nonapplicability, 20-15-106.
Community college district teachers covered by teachers' retirement system, 20-15-106.
Community college district employees covered by public employees' retirement system, 20-15-106.

19-20-303. Inactive membership. Any person's active membership in the retirement system shall terminate, but he shall be an inactive member, when:

(1) he ceases to be employed in a capacity that allows his membership and he has 5 or more years of creditable service in the retirement system;

(2) he ceases to be employed in a capacity that allows his membership and he has less than 5 years of creditable service in the retirement system, but his loss of capacity to be a member was caused by a personal illness determined by the retirement board to be a disability or was caused by service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or by service in the American red cross or merchant marine during time of war; or

(3) he has 5 or more years creditable service and he becomes a member of any other retirement or pension system supported wholly or in part by moneys of another government agency, except the federal social security retirement system, and the membership in the other retirement system would allow credit for the same employment service in two retirement systems. However, no person shall be excluded from active membership solely because he is receiving or is eligible to receive retirement benefits from another retirement system.

History: En. 75-6210 by Sec. 105, Ch. 5, L. 1971; R.C.M. 1947, 75-6210; Sec. 19-4-303, MCA 1991; redes. 19-20-303 by Code Commissioner, 1993.

Cross-References

Social Security coverage for teachers, Title 19, ch. 1, part 8.
Community college teachers eligible, 20-15-106.

19-20-304. Membership termination. The active or inactive membership in the retirement system of any person terminates when:

(1) he retires on a retirement allowance of the retirement system;

(2) he dies;

(3) he withdraws his accumulated contributions to the retirement system under the provisions of 19-20-603; or

(4) he ceases to be employed in a capacity that allows his membership, he has less than 5 years of creditable service in the retirement system, and he cannot qualify under the provisions of 19-20-303(2).

History: En. 75-6211 by Sec. 106, Ch. 5, L. 1971; amd. Sec. 7, Ch. 127, L. 1977; R.C.M. 1947, 75-6211; Sec. 19-4-304, MCA 1991; redes. 19-20-304 by Code Commissioner, 1993.

Cross-References

The Public Employees' Retirement Act — termination of membership, 19-2-601.

19-20-305. Alternate payees — family law orders. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "participant" means a member, retiree, or an actual or potential beneficiary, survivor, or contingent annuitant of the retirement system designated pursuant to this chapter; and

(b) "family law order" means a certified copy of a judgment, decree, or order of a court with competent jurisdiction concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section.

(3) A family law order must identify an alternate payee by full name, current address, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system.

(5) A family law order may only provide for payment to an alternate payee as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified maximum time, the life of the alternate payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific amount per month if the number of payments is specified. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(e) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system allows for that option.

(6) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(7) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

History: En. Sec. 9, Ch. 111, L. 1995; amd. Sec. 8, Ch. 442, L. 1997.

19-20-306. Execution or withholding for support obligation. (1) Benefits in the retirement system are subject to execution and income withholding for the payment of a participant's support obligation.

(2) For purposes of this section:

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.

(c) "Participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to this chapter.

(d) "Support obligation" has the meaning provided in 40-5-403 for support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the retirement system; or

(b) an amount or duration of payment greater than that available to a participant under the retirement system.

(4) The execution or income-withholding order may only provide for payment as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments under this section may be further limited only to a specified maximum time or the life of a specified participant. Payments may also be limited to a specific amount per month if the number of payments is specified.

History: En. Sec. 15, Ch. 552, L. 1997.

Part 4
Creditable Service

Part Cross-References

The Public Employees' Retirement Act — general provisions — service credit, Title 19, ch. 2, part 7.

19-20-401. Creditable service. (1) The creditable service of a member begins on the date of his employment in a capacity prescribed for his eligibility in 19-20-302 and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service.

(2) The creditable service of a member includes the following:

(a) each year of service for which contributions to the retirement system were deducted from his compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that no credit may be awarded for those years of service for which the contributions have been withdrawn and not replaced;

(b) any service awarded by a prior service certificate issued under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, and their subsequent amendments or under the provisions of 19-20-406;

(c) any out-of-state employment service awarded by the retirement board under the provisions of 19-20-402;

(d) any service awarded for employment while on leave under 19-20-403;

(e) any service in the military, red cross, or merchant marine awarded by the retirement board under 19-20-404;

(f) any employment service awarded by the retirement board under the provisions of 19-20-408;

(g) any service transferred after October 1, 1989, from the public employees' retirement system under 19-20-409;

(h) any service awarded by the retirement board for extension service employment under 19-20-410; and

(i) any service awarded for absence due to employment-related injury under 19-20-411.

(3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service.

(4) For a member completing only part-time service during the qualifying period, the first full year's teaching salary used to calculate the cost to purchase creditable service is the salary that he would have earned if his first year part-time salary had been full-time.

History: En. 75-6212 by Sec. 107, Ch. 5, L. 1971; amd. Sec. 5, Ch. 507, L. 1973; amd. Sec. 8, Ch. 127, L. 1977; amd. Sec. 7, Ch. 331, L. 1977; R.C.M. 1947, 75-6212(2) thru (4); amd. Sec. 2, Ch. 551, L. 1981; amd. Sec. 2, Ch. 38, L. 1987; amd. Sec. 2, Ch. 79, L. 1987; amd. Sec. 3, Ch. 56, L. 1989; amd. Sec. 2, Ch. 690, L. 1989; Sec. 19-4-401, MCA 1991; redes. 19-20-401 by Code Commissioner, 1993.

19-20-402. Creditable service for employment in out-of-state public and federal schools. (1) (a) A member who has 5 years of active membership service, who has completed 1 full year of active membership in Montana subsequent to the member's out-of-state service, and who contributes to the retirement system as provided in subsection (2) may receive creditable service in the retirement system for out-of-state service that would have been acceptable under the provisions of this chapter if the service had been performed in the state of Montana.

(b) If the member contributed to a public retirement plan, other than social security, while performing the out-of-state service, the member shall roll the member's contributions over into the retirement system or must receive a refund of the member's contributions for the service before purchasing service under this section.

(c) For the purpose of this section, out-of-state service means service performed:

(i) within the United States in a federal or other public school or institution; and

(ii) outside the United States in a federal or other public or private school or institution.

(2) (a) To purchase the service described in subsection (1)(c)(i), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service, plus interest. The contribution rate must be the rate in effect at the time the member is eligible for the service.

(b) To purchase the service described in subsection (1)(c)(ii), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service or after July 1, 1989, whichever date is later, plus interest. The contribution rate must be the rate in effect at the time the member is eligible to purchase the service or the rate in effect on July 1, 1989, whichever date is later.

(c) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service.

(4) The contributions and interest required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(1); amd. Sec. 1, Ch. 295, L. 1979; amd. Sec. 2, Ch. 113, L. 1989; amd. Secs. 1, 5, Ch. 357, L. 1989; Sec. 19-4-402, MCA 1991; redes. 19-20-402 by Code Commissioner, 1993; amd. Sec. 1, Ch. 136, L. 1995; amd. Sec. 6, Ch. 45, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 45 throughout section substituted references to purchase of service for references to qualifying service; in (1)(a) after "system for out-of-state" deleted "employment"; and in (1)(c) after "out-of-state" substituted "service" for "employment". Amendment effective March 16, 2001.

19-20-403. Creditable service for employment while on leave. (1) (a) A member who is eligible under subsection (1)(b) and who contributes to the retirement system as provided in subsection (2) may receive up to 2 years of creditable service for employment while on leave.

(b) To be eligible to purchase service under this section, a member must have at least 5 years of membership service in the retirement system, must have been a member prior to the leave, and must have completed 1 year of active membership in Montana subsequent to the member's return.

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contributions for the member's first full year's teaching salary earned in Montana after the member's return from leave, plus interest.

(b) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent actuarial valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service.

(4) The contributions and interest may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(2); amd. Sec. 3, Ch. 113, L. 1989; amd. Secs. 2, 5, Ch. 357, L. 1989; Sec. 19-4-403, MCA 1991; redes. 19-20-403 by Code Commissioner, 1993; amd. Sec. 2, Ch. 136, L. 1995; amd. Sec. 7, Ch. 45, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 45 in (1)(b), (2)(a), and (3) substituted references to purchase of service for references to qualifying service. Amendment effective March 16, 2001.

Cross-References

Reemployment of public employee upon completion of military service,10-2-221.
School district employee's official vacation absence counted as service, 19-3-401.
PERS — absence due to illness or injury, 19-3-504.
Reinstatement to job following pregnancy-related leave of absence, 49-2-311.

19-20-404. Creditable service for active service in military, red cross, or merchant marine. (1) A member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Korean war between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive, if the member has 5 years or more of creditable service in the retirement system. To receive credit for this service, a member shall submit to the board a written application and proper certification of the member's military service.

(2) If a member is ineligible for service credit under subsection (1), the member may apply under the provisions of this subsection for creditable service in the retirement system for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person must be awarded creditable service, conditional upon the person's completing 5 years of active membership in Montana, for the number of years, not exceeding 2, that the retirement board determines to be creditable service, if the person contributes to the retirement system an amount equal to the combined employer and employee contributions for the person's first full year's teaching salary earned in Montana following the active service in the armed forces of the United States, the American red cross, or the merchant marine for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in the person's account upon completion of 5 years of membership service in Montana. The contribution rate is that rate in effect at the time the person is eligible for the service.

(3) The contribution required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.

History: **En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(3); amd. Sec. 1, Ch. 193, L. 1981; amd. Sec. 4, Ch. 113, L. 1989; amd. Sec. 1, Ch. 204, L. 1989; amd. Sec. 1, Ch. 185, L. 1993; Sec. 19-4-404, MCA 1991; redes. 19-20-404 by Code Commissioner, 1993; amd. Sec. 6, Ch. 111, L. 1999; amd. Sec. 34, Ch. 7, L. 2001; amd. Sec. 8, Ch. 45, L. 2001.**

Compiler's Comments

2001 Amendments — Composite Section: Chapter 7 in (1) near middle of first sentence after "Korean" substituted "war" for "conflict". Amendment effective October 1, 2001.

Chapter 45 in (1) near middle of first sentence substituted "Korean war" for "Korean conflict" and near beginning of second sentence substituted "receive credit for" for "qualify"; and made minor changes in style. Amendment effective March 16, 2001.

Cross-References

Reemployment of public employee upon completion of military service, 10-2-221.
PERS — election to qualify military service, 19-3-503.
Highway patrol retirement — election to qualify military service, 19-6-801.
Sheriffs' retirement — election to qualify previous military service, 19-7-803.
Game wardens' and peace officers' retirement — election to qualify military service, 19-8-901.
Police retirement — statewide plan — election to qualify previous military service, 19-9-403.
Firefighters' unified retirement — election to qualify previous military service, 19-13-403.
Police retirement — local funds — credit for military service, 19-19-405.
Police retirement — local funds — election to qualify previous military service, 19-19-406.

19-20-405. Limit on creditable service that may be awarded. The total creditable service for service purchased under 19-20-402 through 19-20-404, 19-20-408, and 19-20-410(1) may not exceed 5 years.

History: **En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(4); amd. Sec. 3, Ch. 79, L. 1987; Sec. 19-4-405, MCA 1991; redes. 19-20-405 by Code Commissioner, 1993; amd. Sec. 3, Ch. 136, L. 1995; amd. Sec. 1, Ch. 408, L. 1997; amd. Sec. 7, Ch. 111, L. 1999.**

19-20-406. Creditable service for prior service. A member who is retiring with at least 5 years of creditable service and who has been an active member for at least 5 consecutive school fiscal years may request creditable service for any employment service he rendered prior to September 1, 1937, for which he has not received a prior service certificate. In order to receive the creditable service, he must apply for it and provide certification of the prior service. The retirement board shall determine the amount of creditable service to be awarded, if any, and issue a prior service certificate.

History: **En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(5); Sec. 19-4-406, MCA 1991; redes. 19-20-406 by Code Commissioner, 1993.**

19-20-407. No duplication of credit for same period of service. A member may not receive duplicate credit for the same period of service.

History: **En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(9); Sec. 19-4-407, MCA 1991; redes. 19-20-407 by Code Commissioner, 1993; amd. Sec. 2, Ch. 408, L. 1997.**

Cross-References

The Public Employees' Retirement Act — no duplication of benefits for same period of service, 19-2-703.

19-20-408. Creditable service for employment in private schools. (1) (a) A member who has at least 5 years of membership service, who has completed 1 full year of active membership subsequent to the member's private school employment, and who contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for employment within the United States in a private elementary, secondary, or postsecondary educational institution.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff. If the employment is for teaching kindergarten through grade 12, the service must have been performed as a certified teacher.

(c) Members may not receive credit for service as a student employed by a private elementary, secondary, or postsecondary educational institution.

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute to the retirement system an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned after

becoming a member of the retirement system or after returning to the retirement system, whichever is later, plus interest. The contribution rate must be that rate in effect at the time the member is eligible to purchase the service.

(b) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service.

(4) The contributions and interest may be made in lump-sum payment or in installments as agreed between the person and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section.

History: En. Sec. 1, Ch. 551, L. 1981; amd. Sec. 5, Ch. 113, L. 1989; Sec. 19-4-408, MCA 1991; redes. 19-20-408 by Code Commissioner, 1993; amd. Sec. 4, Ch. 136, L. 1995; amd. Sec. 9, Ch. 45, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 45 in (3) near end substituted "purchase" for "qualify". Amendment effective March 16, 2001.

Cross-References

Education — accreditation and curriculum of schools, Title 20, ch. 7, part 1.

19-20-409. Transfer of service credits and contributions from public employees' retirement system. (1) An active member may at any time before retirement file a written application with the retirement board to purchase all of the member's previous creditable service in the public employees' retirement system. The amount that must be paid to the retirement system to purchase this service under this section is the sum of subsections (2) and (3).

(2) The public employees' retirement system shall transfer to the teachers' retirement system an amount equal to 72% of the amount paid by the member.

(3) The member shall pay either directly or by transferring contributions on account with the public employees' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated, plus accrued interest. Interest must be calculated from the date of termination until a transfer is received by the retirement system, based on the interest tables in use by the public employees' retirement system.

(4) A member who purchases service from the public employees' retirement system in the teachers' retirement system must have completed 5 years of membership service in the teachers' retirement system to receive credit or purchase military service, out-of-state service, employment while on leave, and private school employment.

(5) The retirement board shall determine the service credits that may be transferred.

(6) If an active member who also has creditable service in the public employees' retirement system before becoming a member of the teachers' retirement system dies before purchasing this service in the teachers' retirement system and if the member's service credits from both systems, when combined, entitle the member's beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer to the teachers' retirement system the contributions necessary to purchase this service in the teachers' retirement system as provided in subsections (2) and (3).

(7) (a) If the teachers' retirement board determines that an individual's membership was erroneously classified and reported to the public employees' retirement system, the public employees' retirement board shall transfer to the teachers' retirement system the member's accumulated contributions and service, together with employer contributions plus interest.

(b) For the period of time that the employer contributions are held by the public employees' retirement system, interest paid on employer contributions transferred under this subsection (7) must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.

(c) Any employee and employer contributions due as calculated in 19-20-602 and 19-20-605, plus interest, are the liability of the employee and the employing entity where the error occurred.

(8) A vested member who participated in the public employees' retirement system defined contribution plan provided for in Title 19, chapter 3, part 21, prior to becoming a member of the teachers' retirement system may purchase creditable service for the time spent as a participant in the defined contribution plan if:

(a) the member has completed at least 1 full year in the teachers' retirement system following the member's public employees' retirement system service;

(b) for each full year or portion of a year to be purchased pursuant to this subsection (8), the member contributes the actuarial cost of the service based on the most recent valuation of the system; and

(c) the member has withdrawn the member's money in the member's public employees' retirement system defined contribution plan account or has rolled over the amount required to purchase service in accordance with this subsection (8).

(9) Creditable service purchased under subsection (8) must be determined according to the laws and rules governing service credit in the public employees' retirement system.

History: En. Sec. 2, Ch. 290, L. 1983; amd. Sec. 3, Ch. 690, L. 1989; amd. Sec. 2, Ch. 64, L. 1991; Sec. 19-4-409, MCA 1991; redes. 19-20-409 by Code Commissioner, 1993; amd. Sec. 26, Ch. 412, L. 1995; amd. Sec. 9, Ch. 442, L. 1997; amd. Sec. 10, Ch. 45, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 45 in (1), (4), and (6) substituted references to purchasing service for references to qualifying service; in (1) in first sentence near beginning substituted "file" for "make", substituted "written application" for "written election", and substituted "purchase" for "qualify in the teachers' retirement system"; in (3) in second sentence near middle substituted "a transfer" for "payment"; in (4) near middle substituted "receive credit" for "qualify"; in (7)(a) near middle inserted "public employees' retirement board shall transfer to the teachers' retirement system the" and at end after "contributions plus interest" deleted "must be transferred to the teachers' retirement system and any employee and employer contributions due as calculated in 19-20-602 and 19-20-605, respectively, are the liability of the employee and the employing entity where the error occurred"; inserted (7)(c) regarding liability for employee and employer contributions; inserted (8) providing conditions under which member of teachers' retirement system may purchase creditable service for time previously spent in public employees' retirement system defined contribution plan; inserted (9) concerning determination of creditable serviced purchased under subsection (8); and made minor changes in style. Amendment effective March 16, 2001.

19-20-410. Creditable service for extension service employment. (1) (a) At any time before retirement, a member with 5 years or more of creditable service in the retirement system may file a written application with the retirement board to purchase up to 5 years of employment service with the Montana cooperative extension service, subject to the limitation contained in 19-20-405, if:

(i) the member became a member of the retirement system before July 1, 1989;

(ii) the service involved instructional service at a unit of the Montana university system; and

(iii) the member received a refund of membership contributions under the civil service retirement system or the federal employees' retirement system for the service to be purchased.

(b) For each year of service to be purchased under subsection (1)(a), the member shall contribute to the retirement system an amount equal to the combined employer and employee contribution rate in effect at the time that the member is eligible to purchase the service multiplied by the member's first full year's teaching salary earned after becoming a member of the retirement system, plus interest at the rate that the contribution would have earned had the contribution been in the member's account upon the completion of 5 years of membership service.

(2) In addition to service purchased under subsection (1) and subject to 19-20-407, a member who has purchased 5 years or more of creditable service in the retirement system may purchase additional years of cooperative extension service by contributing to the system the full actuarial cost of the service.

(3) Contributions to purchase service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the retirement board.

History: En. Sec. 1, Ch. 79, L. 1987; amd. Sec. 6, Ch. 113, L. 1989; Sec. 19-4-410, MCA 1991; redes. 19-20-410 by Code Commissioner, 1993; amd. Sec. 3, Ch. 408, L. 1997; amd. Sec. 11, Ch. 45, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 45 throughout section substituted references to purchase of service for references to qualifying service; in (1)(a) near middle substituted "may file" for "may make" and substituted "written application" for "written election"; in (1)(b) at beginning substituted "For each year of service to be purchased" for "To qualify service", near middle inserted "rate in effect at the time that the member is eligible to purchase the service multiplied by", after "a member of the retirement system" deleted "for each year of creditable service", and deleted former last sentence that read: "The contribution rate must be that rate in effect at the time that the member is eligible for the service"; in (2) near middle substituted "a member who has purchased" for "a member with", substituted "creditable service" for "qualified service", and substituted "may purchase additional years of" for "may qualify any"; and made minor changes in style. Amendment effective March 16, 2001.

19-20-411. Absence because of employment-related injury. (1) Subject to the limitation in subsection (6), a member who is absent because of an injury entitling the member to workers' compensation payments may purchase as creditable service the time during which the member is absent. To purchase this service, a member shall contribute to the retirement system as provided in subsection (2) upon the member's return to contributing membership service.

(2) (a) A member who became a member before July 1, 1989, shall contribute an amount equal to:

(i) the contributions that the member would have made had the member not been absent, based on the member's compensation at the commencement of the absence;

(ii) the interest that begins to accrue 1 year from the date that the member returns to covered employment; and

(iii) the interest not paid by the employer under subsection (3).

(b) A member who became a member on or after July 1, 1989, shall pay the actuarial cost of the service based on the most recent valuation of the system.

(3) When a member elects to contribute under subsection (2)(a), the employer shall contribute an amount equal to the contributions that would have been made by the employer had the member not been absent, based on the member's compensation at the commencement of the absence. The employer may contribute an amount equal to the interest accruing on the employer's contributions calculated in the same manner as interest on the employee's contributions under subsection (2)(a). If the employer elects not to pay the interest, this amount must be paid by the employee.

(4) A member shall file with the retirement board a written notice of the member's intent to pay the contributions under subsection (2).

(5) Payment of the employee's contributions may be made in one sum at the time of filing the notice or in installments before termination of covered employment as agreed between the board and the member.

(6) A member absent as provided in subsection (1) loses the right to contribute under this section if the member's accumulated normal contributions are refunded under 19-20-603.

(7) The maximum amount of membership service allowable under this section is 2 years.

History: En. Sec. 1, Ch. 38, L. 1987; amd. Sec. 7, Ch. 113, L. 1989; Sec. 19-4-411, MCA 1991; redes. 19-20-411 by Code Commissioner, 1993; amd. Sec. 5, Ch. 136, L. 1995; amd. Sec. 12, Ch. 45, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 45 in (1) in first and second sentences substituted "purchase" for "qualify". Amendment effective March 16, 2001.

19-20-412. Repealed. Sec. 26, Ch. 111, L. 1999.

History: En. Sec. 1, Ch. 113, L. 1989; amd. Sec. 1, Ch. 8, L. 1991; Sec. 19-4-412, MCA 1991; redes. 19-20-412 by Code Commissioner, 1993; amd. Sec. 6, Ch. 136, L. 1995; amd. Sec. 10, Ch. 442, L. 1997.

19-20-413. Repealed. Sec. 26, Ch. 111, L. 1999.

History: En. Sec. 1, Ch. 13, L. 1991; Sec. 19-4-413, MCA 1991; redes. 19-20-413 by Code Commissioner, 1993.

19-20-414. Rollover or transfer of accumulated contributions. (1) A member who is eligible to purchase service under this chapter may at any time before retirement apply to roll over or transfer the member's accumulated contributions on deposit with any other eligible retirement plan. The total amount transferred to the retirement system may not exceed the amount due to purchase service.

(2) If, in the case of a transfer, the transferred account includes both tax-deferred and taxed amounts, the transferring agency shall identify the member's tax-deferred and taxed amounts at the time the transfer is made.

(3) To the extent permitted by section 401(a)(31) of the Internal Revenue Code and as limited by subsection (1), the board shall accept a direct rollover of eligible distributions from another eligible retirement plan.

History: En. Sec. 10, Ch. 111, L. 1995; amd. Sec. 8, Ch. 111, L. 1999; amd. Sec. 13, Ch. 45, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 45 in (1) near beginning of first sentence substituted "to purchase" for "to qualify". Amendment effective March 16, 2001.

19-20-415. Procedure for purchase of service credit and pick up. (1) A member who wishes to redeposit pursuant to 19-20-602(3) amounts previously withdrawn or who is eligible to purchase service credit pursuant to this part shall make the following series of elections to accomplish the redeposit or purchase:

(a) The member may elect a lump-sum payment, a series of installment payments, or a combination of lump-sum payments and installment payments.

(b) If a series of installment payments is elected by the member, the member may elect to pay the installments directly to the board or to have the installments paid by payroll deduction or the member may select a combination of both.

(c) With respect to installments payable by payroll deduction, if the member's employer has adopted the resolution described in subsection (2), the member shall complete the irrevocable written application to purchase service provided for in subsection (4). If the member's employer has not adopted the resolution, the member may elect only a revocable written application to purchase service.

(2) An employer may adopt a resolution to pick up and pay the member's elective contributions made pursuant to a binding, irrevocable written application. The contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member. The resolution must contain the following statements:

(a) that the member contributions, even though designated as member contributions for state law purposes, are being paid by the employer in lieu of the contributions by the member; and

(b) that the member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the system.

(3) (a) With respect to any member's elective contributions, the effective date of the employer pickup is the later of:

(i) the adoption of the employer's resolution; or

(ii) the date that the irrevocable written application is signed by both the member and the member's employer.

(b) The pickup does not apply to a contribution made before the effective date of the employer's resolution. A written application to purchase additional service that is in effect on the effective date of the employer's resolution is void and the provisions of subsection (1) apply.

(4) The irrevocable written application to purchase service must be signed by the member and the member's employer and filed with the board. Subject to any maximum amounts or duration established by state or federal law, the irrevocable written application must specify:

(a) the amount of the deduction;

(b) the number of installments;

(c) the number of years and type of service that the member is purchasing; and

(d) that the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the board in lieu of contributions by the member.

(5) The minimum duration of the installments required by subsection (4)(b) is 3 months, and the maximum duration is 5 years. The maximum number of years that may be purchased may not exceed the total number of years that the member is eligible to purchase.

(6) The irrevocable written application does not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the system. A member may not prepay any amounts under a binding, irrevocable written application.

(7) If a member terminates or dies prior to completion of the installment payments, the binding, irrevocable written application expires and the board shall prorate the service credit purchased based upon the amount paid as of the date of termination or death. In the case of a termination, the member may make a lump-sum contribution for the balance of the service subject to the limitations of section 415 of the Internal Revenue Code. In the case of the member's death, the payment to purchase service may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code.

History: En. Sec. 9, Ch. 111, L. 1999; amd. Sec. 14, Ch. 45, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 45 throughout section substituted references to written application for references to payroll deduction authorization; in (1)(c) in first sentence near end substituted "complete the irrevocable written application to purchase service" for "elect the irrevocable payroll deduction authorization"; in (3)(a)(ii) substituted text regarding date written application is signed by member and member's employer for "the execution of the irrevocable payroll deduction authorization form"; in (3)(b) at beginning of second sentence substituted "A written application to purchase additional service that is" for "An irrevocable payroll deduction authorization"; in (4) at beginning of first sentence substituted "The irrevocable written application to purchase service" for "If the irrevocable payroll deduction authorization is elected by the member, it" and at end inserted "and filed with the board"; in (5) near beginning of first sentence substituted "installments required by subsection (4)(b)" for "irrevocable payroll deduction authorization", deleted former second sentence that read: "The minimum number of years specified to be purchased may not be less than 1 year or the total number of years that the member is eligible to purchase", and near beginning of second sentence inserted "number of years that may be purchased"; in (6) deleted former second sentence that read: "A member may make more than one binding, irrevocable payroll deduction authorization so long as a subsequent deduction authorization does not amend a previous binding, irrevocable payroll deduction authorization"; and made minor changes in style. Amendment effective March 16, 2001.

19-20-416. Credit for legislative service required. (1) A legislator who did not elect to continue to participate in the system, as provided under 5-2-304, and who subsequently participates as a member must be awarded creditable service for legislative service if the legislator contributes:

(a) an amount equal to the member contributions that would have been made if the legislator had elected membership; and

(b) interest at the rate that the contributions would have earned if they had been on deposit with the retirement system.

(2) The employer contribution must be made by the legislative branch in the amount that would have been contributed if the legislator had elected membership plus interest at the rate that the contributions would have earned if they had been on deposit with the retirement system.

History: En. Sec. 10, Ch. 111, L. 1999.

19-20-417. Credit for substitute teaching service, teacher's aide service, or other service not reported. (1) A substitute teacher or part-time teacher's aide who did not elect membership under 19-20-302 and who subsequently becomes a member must be awarded creditable service for the service not reported if the member contributes the employee and employer contributions that would have been made if the member had been a member from the date of hire, plus interest.

(2) A person who was employed in a capacity that would have been eligible for membership except for the fact that the person was employed for less than 30 days and who subsequently becomes an active member may purchase this service if the person contributes the employee and employer contributions that would have been made if the person had been a member from the date of hire, plus interest.

(3) If an employer fails to report a person who was eligible for membership under 19-20-302, the employee and employer shall make the contributions required by this chapter, plus interest.

(4) The contributions and interest may be made in a lump-sum payment or in installments as agreed to between the person and the board.

History: En. Sec. 11, Ch. 111, L. 1999; amd. Sec. 15, Ch. 45, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 45 in (1) near beginning inserted reference to part-time teacher's aide and after "creditable service for" substituted language concerning service not reported if member makes contributions that would otherwise have been made for former text of introduction and former (1) and (2) that read: "substitute teaching service if the substitute teacher contributes:

(1) an amount equal to the combined member and employer contributions that would have been made if the substitute teacher had elected membership; and

(2) interest at the rate that the contributions would have earned if they had been on deposit with the retirement system"; inserted (2) regarding purchase of service by member who would have been eligible for membership; inserted (3) requiring employer and employee to make contributions in certain instance; inserted (4) allowing contributions to be made in lump-sum payments or in installments; and made minor changes in style. Amendment effective March 16, 2001.

Part 5
Management of Funds

Part Cross-References

The Public Employees' Retirement Act — general provisions — management and investment of pension trust funds, Title 19, ch. 2, part 5.

Firefighters' retirement — management and protection of fund, Title 19, ch. 18, part 2.

Police retirement — local funds — management of police retirement funds, Title 19, ch. 19, part 2.

Retirement fund, 20-9-501.

19-20-501. Financial administration of money. The members of the retirement board are the trustees of all money collected for the retirement system, and as trustees, they shall provide for the financial administration of the money as provided in Article VIII, section 15, of the Montana constitution in the following manner:

(1) The money must be invested and reinvested by the state board of investments.

(2) The retirement board shall annually establish the rate of regular interest. The rate established by the board may not be less than 4%.

(3) The retirement board shall annually divide among the several reserves of the retirement system an amount equal to the average balance of the reserves during the preceding fiscal year multiplied by the rate of regular interest. In accordance with the provisions of 19-20-605(5), the amount to be credited to each reserve must be allocated from the interest and other earnings on the money of the retirement system actually realized during the preceding fiscal year, less the amount allocated to administrative expenses. The administrative expenses of the retirement system, less amortization of intangible assets, may not exceed 1.5% of retirement benefits paid.

(4) The state treasurer is the custodian of the collected retirement system money and of the securities in which the money is invested.

(5) For purposes of Article VIII, section 12, of the Montana constitution, all the reserves established by part 6 of this chapter must be accounts in the pension trust fund type of the treasury fund structure of the state.

(6) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(1) thru (4), (7); amd. Sec. 3, Ch. 282, L. 1983; amd. Sec. 2, Ch. 8, L. 1991; Sec. 19-4-501, MCA 1991; redes. 19-20-501 by Code Commissioner, 1993; amd. Sec. 34, Ch. 532, L. 1997; amd. Sec. 16, Ch. 45, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 45 in (2) inserted second sentence establishing minimum rate of interest; in (3) in last sentence inserted "less amortization of intangible assets"; and made minor changes in style. Amendment effective March 16, 2001.

Cross-References

Investment of public funds and retirement system assets, Art. VIII, sec. 13, Mont. Const.

Public retirement system assets, Art. VIII, sec. 15, Mont. Const.

Housing authority bonds as legal investments, 7-15-4505.

Investment in economic development bonds, 17-5-1525.

Unified investment program — general provisions, 17-6-201.

Separate investment funds, 17-6-203.

Permissible investments, 17-6-211.

The Public Employees' Retirement Act — general provisions — management and investment of pension trust funds, Title 19, ch. 2, part 5.

Firefighters' retirement — investment of fund by trustees, 19-18-402.

Police retirement — local funds — investment of fund, 19-19-203.

Credit unions — authority to receive state deposits, 32-3-401.
Investment in Montana Health Facility Authority bonds, 90-7-113.

19-20-502. Restrictions on use of money. (1) A member of the retirement board or an employee of the board may not:

(a) have an interest, directly or indirectly, in the gains or profits of any investment of money of the retirement system, except as provided in this section;

(b) directly or indirectly, for the member or employee or as an agent, in any manner use the money or deposits of the retirement system except to make current and necessary expenditures authorized by the retirement board; or

(c) become an endorser or surety or in any manner an obligor for money loaned by or borrowed from the retirement system.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

(3) The board may not engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(4) The assets of the retirement system must remain in trust until a warrant for the assets has been paid or an electronic funds transfer of system assets has been made in accordance with law.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(5), (8); Sec. 19-4-502, MCA 1991; redes. 19-20-502 by Code Commissioner, 1993; amd. Sec. 12, Ch. 111, L. 1999; amd. Sec. 17, Ch. 45, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 45 inserted (4) requiring assets to remain in trust until warrant is paid or transfer made; and made minor changes in style. Amendment effective March 16, 2001.

Cross-References

The Public Employees' Retirement Act — restrictions on use of fund, 19-2-505.
Police retirement — local funds — limit on use of fund, 19-19-202.

19-20-503. Transfer of dormant or unclaimed accounts. (1) The retirement board may, in its discretion, transfer the amount in the annuity savings account of an inactive member to the pension accumulation fund if the account has been dormant for a period of 7 years. A right of the member may not be jeopardized by the transfer, and the amount must be transferred back to the member's annuity savings account upon the member's request.

(2) Retirement benefits must be claimed within 5 years of the date of the member's death. If the named beneficiary for the account or the heirs at law fail to claim and accept the benefits, the member's account balance reverts to the pension trust fund.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(6); Sec. 19-4-503, MCA 1991; redes. 19-20-503 by Code Commissioner, 1993; amd. Sec. 11, Ch. 442, L. 1997.

Cross-References

The Public Employees' Retirement Act — transfer of dormant, nonvested member-accumulated contributions, 19-2-1003.

19-20-504. Vesting of retirement allowances upon termination of system. Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(9); Sec. 19-4-504, MCA 1991; redes. 19-20-504 by Code Commissioner, 1993.

Cross-References

The Public Employees' Retirement Act — vesting of retirement benefits upon termination of system, 19-2-1002.

19-20-505 through 19-20-509 reserved.

19-20-510. Probate and nonprobate transfer statutes superseded. If a provision of this chapter conflicts with a provision of Title 72, chapter 2, part 8, the provision of this chapter supersedes the conflicting provision of Title 72, chapter 2, part 8.

History: En. Sec. 19, Ch. 562, L. 1999.

Part 6
Funds — Contributions

Part Cross-References

PERS — member's contributions, 19-3-315.
PERS — employer contributions, 19-3-316.
Judges' retirement fund — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — state and employer contributions, 19-9-702, 19-9-703.
Police retirement — statewide plan — member's contributions, 19-9-710.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
University System optional retirement program — contributions, 19-21-203.

19-20-601. Method of financing. The retirement board shall establish and maintain the funds described in this part, in which all of the assets of the retirement system shall be credited according to the purpose for which the assets are held.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(1); Sec. 19-4-601, MCA 1991; redes. 19-20-601 by Code Commissioner, 1993.

Cross-References

Retirement fund, 20-9-501.

19-20-602. Annuity savings fund — member's contribution. (1) The annuity savings fund is a fund in which the contributions for the members to provide for their retirement allowance or benefits must be accumulated in individual accounts for each member. The normal contribution of each member is 7.15% of the member's earned compensation.

(2) Contributions to and payments from the annuity savings fund must be made in the following manner:

(a) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code:

(i) shall pick up and pay the contributions that would be payable by the member under this subsection (2) for service rendered after June 30, 1985;

(ii) shall pick up and pay the contributions that would be paid in the manner provided in 19-20-716; and

(iii) may pick up and pay the contributions that would be payable by the member pursuant to 19-20-415.

(b) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's earned compensation as defined in 19-20-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the retirement board.

(d) The deductions must be made notwithstanding that the minimum compensation provided by law for a member may be reduced by the deductions. Each member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

(3) In addition to the normal contributions, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, an amount equal to accumulated contributions that the member has previously withdrawn, plus interest in the amount the contributions would have earned had the contributions not been withdrawn. The redeposit must be made in accordance with 19-20-415.

(4) The accumulated contributions of a member withdrawn by the member or paid to the member's estate or to the member's designated beneficiary in event of the member's death must be paid from the annuity savings fund. Upon the retirement of a member, the member's accumulated contributions must be transferred from the annuity savings fund to the pension accumulation fund.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(2); amd. Sec. 1, Ch. 198, L. 1983; amd. Sec. 1, Ch. 527, L. 1983; amd. Sec. 7, Ch. 464, L. 1985; Sec. 19-4-602, MCA 1991; redes. 19-20-602 by Code Commissioner, 1993; amd. Sec. 5, Ch. 111, L. 1995; amd. Sec. 12, Ch. 442, L. 1997; amd. Sec. 13, Ch. 111, L. 1999; amd. Sec. 4, Ch. 360, L. 1999.

19-20-603. Withdrawal of accumulated contributions — options. An inactive member electing to do so or a person whose membership terminates without a prospect or anticipation that the member will return to work for an employer within 60 days of termination may withdraw the member's accumulated contributions from the annuity savings fund in the retirement system in accordance with the following provisions:

(1) An inactive member under the provisions of 19-20-303(1) or (3) may elect, without right of revocation, to withdraw the member's accumulated contributions. If the member does not withdraw the accumulated contributions, the member remains an inactive member of the retirement system with the right to qualify for its benefits.

(2) Upon recovery from a disabling illness or separation from the armed forces, a person qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's accumulated contributions unless the member returns to active membership.

(3) Upon written application to the board, a terminating member may have the payment of all or any portion of the member's accumulated contributions rolled over or transferred into another qualified plan designated by the member. The portion not rolled over or transferred must be paid directly to the terminating member. The board shall provide forms for filing the written application. The terminating member is responsible for correctly designating an account or plan eligible to receive the tax-deferred amount in order to continue the tax-deferred status of the amount. To the extent required by section 401(a)(31) of the Internal Revenue Code, the board shall allow members and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

(4) If a nonvested member terminates with accumulated contributions of less than $200, the board shall pay the accumulated contributions in a lump sum as soon as administratively feasible without a written application from the member unless there is a return to service. Upon the payment of accumulated contributions, the member is considered to have withdrawn from the system.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(6); amd. Sec. 1, Ch. 226, L. 1993; Sec. 19-4-603, MCA 1991; redes. 19-20-603 by Code Commissioner, 1993; amd. Sec. 13, Ch. 442, L. 1997; amd. Sec. 14, Ch. 111, L. 1999; amd. Sec. 18, Ch. 45, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 45 in (3) in third sentence substituted "forms for filing" for "forms for making". Amendment effective March 16, 2001.

Cross-References

The Public Employees' Retirement Act — refund of member's contributions on termination of service, 19-2-602.

19-20-604. *(Temporary)* **State contributions — termination.** The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.11% of the compensation of members participating in the system on or after July 1, 1999. The contributions are statutorily appropriated, as provided in 17-7-502, to the pension trust fund. The state contribution provided for in this section terminates when the amortization period for the system's unfunded liability is 10 years or less according to the system's latest actuarial valuation. The board shall certify amounts due under this section on a monthly basis. The state treasurer shall transfer the certified amounts to the pension trust fund within 1 week. *(Terminates on occurrence of contingency—sec. 10, Ch. 360, L. 1999.)*

History: En. Sec. 2, Ch. 360, L. 1999.

Compiler's Comments

Contingent Termination: Section 10, Ch. 360, L. 1999, provided: "[Sections 2 and 3] [enacting 19-20-604 and amending 17-7-502] terminate when the amortization period for the system's unfunded liability is 10 years or less according to the system's latest actuarial valuation. The teachers' retirement board shall notify the governor and the code commissioner on occurrence of this contingency."

19-20-605. Pension accumulation fund — employer's contribution. The pension accumulation fund is the fund in which the reserves for payment of retirement allowances and benefits must be accumulated and from which retirement allowances and benefits must be paid to retirees or their beneficiaries. Contributions to and payments from the pension accumulation fund must be made as follows:

(1) Each employer shall pay into the pension accumulation fund an amount equal to 7.47% of the earned compensation of each member employed during the whole or part of the preceding payroll period.

(2) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(3) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(4) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(5) All interest and other earnings realized on the money of the retirement system must be credited to the pension accumulation fund, and the amount required to allow regular interest on the annuity savings fund must be transferred to that fund from the pension accumulation fund.

(6) The retirement board may transfer from the pension accumulation fund to the expense fund an amount necessary to cover expenses of administration.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(4); amd. Sec. 2, Ch. 193, L. 1981; amd. Sec. 1, Ch. 251, L. 1981; amd. Sec. 9, Ch. 549, L. 1981; amd. Sec. 2, Ch. 527, L. 1983; amd. Sec. 3, Ch. 658, L. 1985; amd. Sec. 2, Ch. 204, L. 1989; amd. Sec. 2, Ch. 530, L. 1993; Sec. 19-4-605, MCA 1991; redes. 19-20-605 by Code Commissioner, 1993; amd. Sec. 14, Ch. 442, L. 1997; amd. Sec. 35, Ch. 532, L. 1997.

19-20-606. Repealed. Sec. 40, Ch. 532, L. 1997.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(5); amd. Sec. 2, Ch. 328, L. 1985; Sec. 19-4-606, MCA 1991; redes. 19-20-606 by Code Commissioner, 1993.

19-20-607 through 19-20-620 reserved.

19-20-621. Montana university system optional retirement program supplemental contributions. (1) Each employer within the university system with employees participating in the optional retirement program under Title 19, chapter 21, shall contribute to the teachers' retirement system a supplemental employer contribution sufficient to amortize, by July 1, 2033, the past service liability of the teachers' retirement system for the university system members.

(2) The optional retirement program supplemental employer contribution as a percentage of the total compensation of all employees participating in the program must increase to:

(a) 2.81% beginning July 1, 1997;
(b) 3.12% beginning July 1, 1998;
(c) 3.42% beginning July 1, 1999;
(d) 3.73% beginning July 1, 2000; and
(e) 4.04% beginning July 1, 2001.

(3) The board shall periodically review the supplemental employer contribution rate and recommend adjustments to the legislature as needed to maintain the amortization of the university system's past service liability by July 1, 2033.

History: En. Sec. 1, Ch. 419, L. 1997.

19-20-622. Renumbered 19-20-720. Sec. 83, Ch. 7, L. 2001.

Part 7
Benefits in General

Part Cross-References

The Public Employees' Retirement Act — general provisions — management of benefit payments, Title 19, ch. 2, part 9.

University System optional retirement program — payments, 19-21-211.

19-20-701. Benefits. The retirement, disability, and other benefits of the retirement system shall be granted on the basis of the provisions of this chapter.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(1); Sec. 19-4-701, MCA 1991; redes. 19-20-701 by Code Commissioner, 1993.

Cross-References

Volunteer Firefighters' Compensation Act — pension benefits, 19-17-404.

Firefighters' retirement — benefits association may provide, 19-18-601.

19-20-702. Optional allowances. (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the optional allowances described in subsection (2) in lieu of the normal form of retirement allowance, which is provided for in 19-20-902 and part 8 of this chapter. If a member dies within 30 days after retirement, the member's election to receive an optional allowance is void and the member's death will be considered as that of an active member.

(2) An optional allowance is the actuarial equivalent of the member's service retirement or disability retirement allowance at the time of the member's retirement effective date and provides an allowance payable to the member throughout the member's lifetime and, upon the member's death, an allowance payable to the person that the member nominated by written designation, duly acknowledged and filed with the retirement board at the time of the member's retirement, in accordance with one of the following options:

(a) Option A—the optional allowance will be paid to the member throughout the member's lifetime and, upon the member's death, continue throughout the lifetime of the member's designated beneficiary.

(b) Option B—the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, one-half of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.

(c) Option C—the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, two-thirds of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.

(d) Period certain and life—a retirement allowance will be paid for a certain period of time or for the member's lifetime, whichever is greater.

(i) The member shall elect one of the following certain time periods:
(A) 10 years if the member is 75 years of age or younger at the time of retirement; or
(B) 20 years if the member is 65 years of age or younger at the time of retirement.

(ii) At the time of retirement, the member shall file with the board a written nomination of beneficiaries to receive payments if the member dies before the end of the certain period elected. Unless limited by a family law order, the nominated beneficiary may be changed by the member at any time by filing with the board a written notice designating different beneficiaries.

(3) (a) Upon written application to the retirement board, a retired member whose effective date of retirement is before October 1, 1993, and who is receiving an optional retirement allowance may designate a different beneficiary, select a different option, or convert the member's optional retirement allowance to a normal form of retirement allowance if:

(i) the original beneficiary has died. The benefit must convert to the normal form of retirement allowance effective the first of the month following the death of the designated beneficiary.

(ii) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must convert to the normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change.

(4) A retired member receiving an optional retirement allowance pursuant to subsection (2)(a), (2)(b), or (2)(c) that is effective after October 1, 1993, may file a written application to revert the optional retirement allowance to the full normal form of retirement allowance available at the time of retirement if:

(a) the original beneficiary has died. The benefit must revert to the full normal form of retirement allowance effective the first of the month following the death of the designated beneficiary.

(b) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must revert to the full normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(5) The normal form of retirement allowance available must be increased by the value of any postretirement adjustments received by the member since the effective date of retirement.

(6) The retired member shall file the written application required by subsection (3) or (4) with the board to designate a different beneficiary or to select an actuarially equivalent optional allowance, or both, within 18 months of the death or divorce of the designated beneficiary.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(8); amd. Sec. 1, Ch. 493, L. 1985; amd. Sec. 1, Ch. 9, L. 1993; Sec. 19-4-702, MCA 1991; redes. 19-20-702 by Code Commissioner, 1993; amd. Sec. 15, Ch. 442, L. 1997; amd. Sec. 15, Ch. 111, L. 1999.

Cross-References

PERS — optional forms of benefits, 19-3-1501.
Judges' retirement — optional forms of benefits, 19-5-701.
Sheriffs' retirement — optional forms of benefits, 19-7-1001.
Game wardens' and peace officers' retirement — optional forms of benefits, 19-8-801.

19-20-703. Payments to be monthly. (1) All retirement allowances must be paid in equal monthly installments.

(2) The retirement allowance may commence:

(a) no earlier than the first day of the month following the member's termination date or on the first day of the month following the date when the member first becomes eligible, whichever date is later; or

(b) if requested by the inactive member in writing:

(i) on the first day of a later month; or

(ii) on the first day of the month following the member's 60th birthday.

(3) Distribution of a member's benefit must begin by the later of the April 1 following the calendar year in which a member attains age 70 1/2 or April 1 of the year following the calendar

year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit as provided in 19-20-702(2)(d)(i)(A).

(4) The life expectancy of a member or the member's beneficiary may not be recalculated after benefits commence.

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part); Sec. 19-4-703, MCA 1991; redes. 19-20-703 by Code Commissioner, 1993; amd. Sec. 16, Ch. 442, L. 1997; amd. Sec. 16, Ch. 111, L. 1999.

Cross-References

Benefits tax-exempt, 15-30-111.

The Public Employees' Retirement Act — frequency of benefit payments, 19-2-902.

19-20-704. Repealed. Sec. 26, Ch. 111, L. 1999.

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part); Sec. 19-4-704, MCA 1991; redes. 19-20-704 by Code Commissioner, 1993.

19-20-705. Correction of erroneous payments. (1) If a change or error in the records results in a member or beneficiary receiving from the retirement system more or less than the member or beneficiary would have been entitled to receive had the records been correct, then, on discovery of the error, the retirement board shall correct the error and, as far as practicable, shall adjust the payments so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled will be paid.

(2) If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve an arrangement to collect the correct amount, including any or all of the following arrangements:

(a) adjustment of subsequent payments to the board from a member or an employer;

(b) collection of installment payments or a lump-sum payment from an employer; or

(c) collection of installment payments, a lump-sum payment, or a rollover payment from a member.

History: En. 75-6217 by Sec. 112, Ch. 5, L. 1971; amd. Sec. 12, Ch. 127, L. 1977; R.C.M. 1947, 75-6217(2); Sec. 19-4-705, MCA 1991; redes. 19-20-705 by Code Commissioner, 1993; amd. Sec. 19, Ch. 45, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 45 inserted (2) authorizing board to reject payment or accept payment subject to any of listed arrangements to collect correct amount; and made minor changes in style. Amendment effective March 16, 2001.

Cross-References

The Public Employees' Retirement Act — adjustment of errors in payments, 19-2-903.

19-20-706. Exemption from taxation and legal process. Except as provided in 19-20-305 and 19-20-306, the retirement allowances or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

(1) exempted from any state, county, or municipal tax of the state of Montana except for:

(a) a retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-20-602;

(2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and

(3) unassignable except as specifically provided in this chapter.

History: En. 75-6215 by Sec. 110, Ch. 5, L. 1971; R.C.M. 1947, 75-6215; amd. Sec. 8, Ch. 464, L. 1985; amd. Sec. 25, Ch. 83, L. 1989; amd. Sec. 7, Ch. 823, L. 1991; amd. Sec. 3, Ch. 259, L. 1993; Sec. 19-4-706, MCA 1991; redes. 19-20-706 by Code Commissioner, 1993; amd. Sec. 6, Ch. 111, L. 1995; amd. Sec. 17, Ch. 442, L. 1997; amd. Sec. 19, Ch. 552, L. 1997.

Cross-References

Benefits tax-exempt, 15-30-111.

Residential property tax credit for elderly — partial exclusion of retirement benefits from income, 15-30-171.

The Public Employees' Retirement Act — exemption from taxes and legal process — exceptions, 19-2-1004.

University System optional retirement program — exemption from taxation, legal process, and assessments, 19-21-212.

Execution of judgment, Title 25, ch. 13.

Garnishment — earnings of judgment debtor, 25-13-614.
Prejudgment attachment, Title 27, ch. 18.
Exempt property — bankruptcy proceeding, 31-2-106.
Exemption of benefits from liens of health care providers, 71-3-1118.

19-20-707. Repealed. Sec. 26, Ch. 111, L. 1999.

History: (1)En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; Sec. 75-6208, R.C.M. 1947; (2)En. 75-6207.1 by Sec. 2, Ch. 443, L. 1977; Sec. 75-6207.1, R.C.M. 1947; R.C.M. 1947, 75-6207.1, 75-6208(3)(c); amd. Sec. 9, Ch. 464, L. 1985; Sec. 19-4-707, MCA 1991; redes. 19-20-707 by Code Commissioner, 1993.

19-20-708. Repealed. Sec. 26, Ch. 111, L. 1999.

History: En. Sec. 1, Ch. 658, L. 1985; Sec. 19-4-708, MCA 1991; redes. 19-20-708 by Code Commissioner, 1993.

19-20-709. Repealed. Sec. 26, Ch. 111, L. 1999.

History: En. Sec. 2, Ch. 658, L. 1985; Sec. 19-4-709, MCA 1991; redes. 19-20-709 by Code Commissioner, 1993.

19-20-710. Maximum benefit limitation. A monthly benefit paid under the retirement system provided for in this chapter may not exceed the annual limits on benefits as specified in section 415 of the Internal Revenue Code for calendar years 1988 and thereafter. However, benefits in excess of those limits may be paid from an excess benefit arrangement subject to 19-20-718.

History: En. Sec. 1, Ch. 14, L. 1987; Sec. 19-4-710, MCA 1991; redes. 19-20-710 by Code Commissioner, 1993; amd. Sec. 17, Ch. 111, L. 1999.

19-20-711. Repealed. Sec. 6, Ch. 360, L. 1999.

History: En. Sec. 1, Ch. 115, L. 1989; Sec. 19-4-711, MCA 1991; redes. 19-20-711 by Code Commissioner, 1993; amd. Sec. 18, Ch. 442, L. 1997.

19-20-712. Repealed. Sec. 6, Ch. 360, L. 1999.

History: En. Sec. 2, Ch. 115, L. 1989; Sec. 19-4-712, MCA 1991; redes. 19-20-712 by Code Commissioner, 1993; amd. Sec. 19, Ch. 442, L. 1997.

19-20-713. Repealed. Sec. 6, Ch. 360, L. 1999.

History: En. Sec. 3, Ch. 115, L. 1989; Sec. 19-4-713, MCA 1991; redes. 19-20-713 by Code Commissioner, 1993; amd. Sec. 20, Ch. 442, L. 1997.

19-20-714. Repealed. Sec. 6, Ch. 360, L. 1999.

History: En. Sec. 1, Ch. 530, L. 1993.

19-20-715. Compensation limit. (1) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code must be disregarded for individuals who are not eligible employees. The limitation on compensation for eligible employees may not be less than the amount that was allowed to be taken into account under this chapter on July 1, 1993. For purposes of this section, an eligible employee is an individual who was a member in the retirement system prior to July 1, 1996.

(2) In determining a member's retirement allowance under 19-20-802 or 19-20-804, the compensation reported in each year of the 3 years that make up the average final compensation may not be greater than 110% of the previous year's compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, except as provided by rule by the retirement board.

(3) Earned compensation in excess of the amount specified in subsection (2) is considered termination pay and must be included in the calculation of average final compensation as provided in 19-20-716.

History: En. Sec. 8, Ch. 111, L. 1995; amd. Sec. 21, Ch. 442, L. 1997.

19-20-716. Termination pay. (1) If a member terminates and receives termination pay at the time of retirement, the member shall select, subject to subsection (4), by signing a binding, irrevocable written election at least 90 days before the member's termination date, one of the following options:

(a) Option 1—The member may use the total termination pay in the calculation of the member's average final compensation. The member and the employer shall pay contributions to the retirement system as determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time of termination.

(b) Option 2—The member may use a yearly amount of the total termination pay added to each of the 3 consecutive years' salary used in the calculation of the member's average final compensation. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602 and 19-20-605(1). The contributions must be made at the time of termination.

(c) Option 3—The member may exclude the termination pay from the average final compensation. A contribution is not required of either the member or the employer.

(2) A binding, irrevocable written election required by this section must be signed by both the member and the employer at least 90 days prior to the member's termination date and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and

(d) the effective date of the pickup is the date that the irrevocable written election is signed by both the member and employer. The effective date must be at least 90 days prior to the date of the member's termination. The pickup does not apply to a contribution made before the effective date of the pickup.

(3) Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

(a) deducted from the portion of termination pay that:

(i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) can be included in the member's gross income for federal tax purposes; and

(b) picked up by the employer.

(4) If a member and the member's employer fail to sign the written election within the time period required in subsection (1) or if the member's contribution is greater than the total amount of termination pay, the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) on all or any part of the termination pay received. A contribution made pursuant to this subsection cannot be picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code.

History: **En. Sec. 2, Ch. 442, L. 1997; amd. Sec. 18, Ch. 111, L. 1999; amd. Sec. 20, Ch. 45, L. 2001.**

Compiler's Comments

2001 Amendment: Chapter 45 throughout section substituted references to sign for references to execute; in (2) in introduction near beginning before "election" inserted "written" and inserted "at least 90 days prior to the member's termination date"; in (2)(d) near middle after "is the date" substituted "that the irrevocable written election is signed" for "of execution of the binding, irrevocable election" and inserted second sentence requiring effective date to be at least 90 days before member's termination date; in (4) near beginning of first sentence substituted "and the member's employer fail to sign" for "fails to make"; and made minor changes in style. Amendment effective March 16, 2001.

19-20-717. Effect of no designation or no surviving beneficiary. (1) If a beneficiary is not designated or if no designated beneficiary survives the payment recipient, the estate of the payment recipient is the beneficiary and is entitled to any lump-sum payment or retirement benefit accrued but not received prior to the death of the payment recipient. If the estate would not be probated but for the amount due from the retirement system, all of the amount due must be paid directly, without probate, to the surviving next of kin of the deceased or to the guardians of the survivor's estate, share and share alike.

(2) Payment must be made in the same order in which the following groups are listed:

(a) husband or wife;

(b) children;

(c) father and mother;
(d) grandchildren;
(e) brothers and sisters; or
(f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the system, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death.

History: En. Sec. 4, Ch. 442, L. 1997.

Cross-References

Uniform Probate Code — probate and administration, Title 72, ch. 3.

19-20-718. *(Effective on later of occurrence of contingency or July 1, 1999)* **Maximum contribution limitation.** (1) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the system if the amount of the contribution would exceed the limits in section 415(c) or 415(n) of the Internal Revenue Code by using the following methods:

(a) If the system's law requires a lump-sum payment for purchase of service credit, the board may establish a periodic payment plan in order to avoid a contribution in excess of the limits of section 415(c) or 415(n) of the Internal Revenue Code.

(b) If the board's option in subsection (1)(a) will not avoid a contribution in excess of the limits in section 415(c) of the Internal Revenue Code, the board may direct the excess contribution to the qualified excess benefit arrangement pursuant to section 415(m) of the Internal Revenue Code.

(2) If the board's options in subsections (1)(a) and (1)(b) will not avoid a contribution in excess of the limits of section 415(c) of the Internal Revenue Code, the board shall reduce or refuse the contribution.

(3) The board shall use the provisions of section 415(n) of the Internal Revenue Code, as the provisions apply to a government plan, to facilitate member's service purchases. An eligible participant in a retirement plan, as defined by section 1526 of the Taxpayer Relief Act of 1997, 26 U.S.C. 415, may purchase service credit without regard to the limitations of section 415(c)(1) of the Internal Revenue Code under the Montana statutes in effect on August 5, 1997.

(4) For the purpose of calculating the maximum contribution under section 415 of the Internal Revenue Code, the definitions of "compensation", "wages", and "salary" include the amount of any elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member by reason of sections 125, 403(b), or 457 of the Internal Revenue Code.

History: En. Sec. 19, Ch. 111, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 29(2), Ch. 111, L. 1999, provided: "The provisions in [sections 4 and 19] [19-20-212 and 19-20-718], providing for the creation and use of an excess benefit arrangement, are effective on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation and use of the excess benefit arrangement provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan."

19-20-719. Guaranteed annual benefit adjustment — rulemaking. (1) Subject to subsection (3), on January 1 of each year, the retirement allowance payable to each recipient who is eligible under subsection (2) must be increased by 1.5%.

(2) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the retiree's most recent retirement effective date is at least 36 months prior to January 1 of the year in which the adjustment is to be made.

(3) On January 1, 2002, and January 1 of each year following the system's biennial valuation, the board may increase the annual benefit adjustment provided in subsection (1) until a maximum of 3% is guaranteed if:

(a) the period required to amortize the system's actuarial unfunded liability, as determined by the most recent biennial valuation, adjusted for any benefit enhancement enacted by the legislature since the most recent biennial valuation, is less than 25 years;

(b) sufficient funds are available to increase the guaranteed annual benefit adjustment by at least 0.1%; and

(c) the increase granted by the board would not cause the amortization period, as of the most recent valuation, to exceed 25 years.

(4) The board shall adopt rules to administer the provisions of this section.

History: En. Sec. 1, Ch. 360, L. 1999; amd. Sec. 20, Ch. 149, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 149 in (1) at beginning inserted "Subject to subsection (3)"; inserted (3) allowing the board, subject to certain requirements, to increase the annual benefit adjustment until a maximum of 3% is guaranteed; and made minor changes in style. Amendment effective March 29, 2001.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-20-720. Minimum monthly benefit allowance. (1) A retired member of the retirement system who on July 1, 2001, is receiving a service or disability retirement allowance that is less than $600 is eligible to receive a minimum monthly benefit allowance of $600 if the member at the time of retirement had 25 years or more of creditable service.

(2) A beneficiary or beneficiaries of a deceased retired member who on July 1, 2001, are receiving an optional service, disability, or survivorship allowance that when added together are less than $600 are eligible to receive a proportional share of a minimum monthly benefit allowance of $600 if the retired member at the time of retirement had 25 years or more of creditable service.

(3) If on July 1, 2001, multiple beneficiaries are receiving benefits under a retired member's account, the minimum monthly benefit must be divided in the same proportion as was the initial service, disability, or survivorship allowance.

History: En. Sec. 5, Ch. 360, L. 1999; amd. Sec. 19, Ch. 149, L. 2001; Sec. 19-20-622, MCA 1999; redes. 19-20-720 by Sec. 83, Ch. 7, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 149 throughout section substituted "July 1, 2001" for "July 1, 1999" and changed "$500" to "$600". Amendment effective March 29, 2001.

19-20-721. Designation of beneficiary. (1) Each member or recipient of a benefit shall file with the board a written application nominating a beneficiary who may be eligible to receive the benefit provided pursuant to this chapter. The board shall provide a form that may be used for this purpose. A member or benefit recipient may revoke the application and nominate a different beneficiary by filing a new form for this purpose with the board.

(2) A beneficiary who renounces an interest in the right to a payment of a benefit will be considered, for the purposes of further payment by the board of a renounced interest, to have predeceased the member or beneficiary.

History: En. Sec. 21, Ch. 45, L. 2001.

Compiler's Comments

Effective Date: Section 26, Ch. 45, L. 2001, provided that this section is effective on passage and approval. Approved March 16, 2001.

Part 8
Superannuation Retirement

Part Cross-References

PERS — service retirement, Title 19, ch. 3, part 9.
Judges' retirement — service retirement, Title 19, ch. 5, part 5.
Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.
Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.
Game wardens' and peace officers' retirement — service retirement, Title 19, ch. 8, part 6.

Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.
Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.

19-20-801. Eligibility for service retirement. A member who has at least 5 full years of creditable service and who has attained the age of 60 or has been credited with full-time or part-time creditable service in 25 or more years may retire from service if the member has terminated employment in all positions from which the member is eligible to retire and files with the retirement board a written application.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(a); amd. Sec. 3, Ch. 527, L. 1983; Sec. 19-4-801, MCA 1991; redes. 19-20-801 by Code Commissioner, 1993; amd. Sec. 22, Ch. 442, L. 1997; amd. Sec. 20, Ch. 111, L. 1999.

19-20-802. Early retirement. (1) A member who is not eligible for service retirement but who has at least 5 years of creditable service and who has attained the age of 50 may retire from service and be eligible for an early retirement allowance if the member files with the retirement board the member's written application.

(2) The early retirement allowance must be determined as prescribed in 19-20-804(1) and section 5, Chapter 549, Laws of 1981, with the exception that the allowance will be reduced as follows:

(a) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 25 years of creditable service; and

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 25 years of creditable service.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(3)(d); amd. Sec. 1, Ch. 396, L. 1981; amd. Sec. 7, Ch. 549, L. 1981; amd. Sec. 4, Ch. 527, L. 1983; Sec. 19-4-802, MCA 1991; redes. 19-20-802 by Code Commissioner, 1993; amd. Sec. 21, Ch. 111, L. 1999.

Cross-References

PERS — eligibility for early retirement, 19-3-902.
Judges' retirement — involuntary retirement benefit, 19-5-503.
Highway patrol retirement — involuntary retirement benefit, 19-6-503.
Sheriffs' retirement — early retirement option, 19-7-502.
Game wardens' and peace officers' retirement — early retirement benefit, 19-8-604.

19-20-803 reserved.

19-20-804. Allowance for service retirement. (1) Upon termination, a member who has attained normal retirement age must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service and service transferred under 19-20-409.

(2) Except as provided in subsection (4), a retired member may be employed part-time in a position specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater of:

(a) one-third of the sum of the member's average final compensation; or

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(3) On July 1 of each year following the member's retirement effective date, the maximum earning amount allowed under subsection (2)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding year.

(4) (a) Except as provided in subsection (5), the retirement benefit of a retired member employed in a full-time position or earning more than allowed by subsection (2) must be canceled beginning in the month in which the retired member returns to full-time employment or earns more than allowed.

(b) The retirement benefits of a retired member who was employed in a full-time position or who exceeded the amount that the retired member was eligible to earn under subsection (2) and who was reemployed for less than 1 year must, upon termination of employment, be reinstated beginning in the later of either the month following termination or July 1 of the school year following the date on which the retired member was reemployed. The reinstated retirement benefit is the amount that the retired member would have been entitled to receive had the retired member not returned to employment.

(c) Upon retirement after cancellation of a retired member's benefit pursuant to subsection (4)(a), a retired member who is reemployed as an active member for a minimum of 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.

(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be terminated.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(d), (3)(a), (3)(b); amd. Sec. 6, Ch. 549, L. 1981; amd. Sec. 1, Ch. 443, L. 1983; amd. Sec. 8, Ch. 113, L. 1989; Sec. 19-4-804, MCA 1991; redes. 19-20-804 by Code Commissioner, 1993; amd. Sec. 23, Ch. 442, L. 1997; amd. Sec. 22, Ch. 111, L. 1999; amd. Sec. 22, Ch. 45, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 45 in (1) near beginning substituted "a member who has attained normal retirement age" for "an eligible member"; in (2)(a) after "average final compensation" deleted "plus normal annual salary increases for teaching personnel employed by the school district, state agency, political subdivision, or university unit that employed the member at the time of retirement"; inserted (3) providing increase in maximum earning amount allowed under subsection (2)(a); and made minor changes in style. Amendment effective March 16, 2001.

19-20-805. Earned compensation — part-time service. The earned compensation of a member who retired under 19-20-802 or 19-20-804 and had less than 3 consecutive years of full-time service during the 5 years preceding the member's retirement is the compensation that the member would have earned in the final 3 years had the member's part-time service been full-time service. To determine the compensation that the member would have earned, the compensation reported must be divided by the part-time service credited to the member's account.

History: En. Sec. 1, Ch. 442, L. 1997.

Part 9
Disability Retirement

Part Cross-References

PERS — disability retirement, Title 19, ch. 3, part 10.
Judges' retirement — disability retirement benefits, Title 19, ch. 5, part 6.
Highway patrol retirement — disability retirement benefits, Title 19, ch. 6, part 6.
Sheriffs' retirement — disability retirement benefits, Title 19, ch. 7, part 6.
Game wardens' and peace officers' retirement — disability retirement benefits, Title 19, ch. 8, part 7.
Police retirement — statewide plan — disability retirement benefits, Title 19, ch. 9, part 9.
Firefighters' unified retirement — disability retirement benefits, Title 19, ch. 13, part 8.

19-20-901. Eligibility for disability retirement — determination by board. (1) Upon the application of a member or of the member's employer for a disability retirement allowance, any member who has 5 or more years of creditable service and who has become disabled while being an active member may be retired by the retirement board the month immediately following the month in which employment is terminated. In order for a member to be eligible for disability retirement, the retirement board or its representative shall certify that the member is mentally or physically incapacitated for the further performance of the member's duties, that the incapacity is likely to be permanent, and that the member should be retired. The board's representative shall report to the board the representative's findings and any action taken by the representative, and the action must be presented to the board for approval by the board.

(2) In making a determination under subsection (1), the retirement board or its representative may:

(a) order examinations by a physician, psychologist, or vocational rehabilitation counselor;

(b) conduct hearings, administer oaths and affirmations, take depositions, and certify to official acts; and

(c) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memorandums, and other records considered necessary as evidence in connection with a claim for disability retirement. The subpoenas issued under this subsection (2)(c) are enforceable as provided in 2-4-104.

(3) The retirement board may secure and pay reasonable compensation for professional services and advice that the board determines necessary to carry out the purposes of this part.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(a); amd. Sec. 3, Ch. 8, L. 1991; amd. Sec. 2, Ch. 226, L. 1993; Sec. 19-4-901, MCA 1991; redes. 19-20-901 by Code Commissioner, 1993; amd. Sec. 23, Ch. 111, L. 1999.

19-20-902. Allowance for disability retirement. (1) Upon retirement for disability, a member must receive a disability retirement allowance equal to the greater of:

(a) one-sixtieth of the member's average final compensation multiplied by the sum of the number of years of creditable service, including service transferred under 19-20-409; or

(b) one-fourth of the member's average final compensation.

(2) The earned compensation in the year of termination that is included in the calculation of average final compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary that the member would have received under the member's contract had the member completed the full year. Any termination pay received by the member is limited to the amount actually paid and is not the amount that the member would have earned had the member completed the full year.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(5)(a) thru (5)(c); amd. Sec. 61, Ch. 370, L. 1987; amd. Sec. 9, Ch. 113, L. 1989; amd. Sec. 3, Ch. 226, L. 1993; Sec. 19-4-902, MCA 1991; redes. 19-20-902 by Code Commissioner, 1993; amd. Sec. 24, Ch. 442, L. 1997; amd. Sec. 24, Ch. 111, L. 1999.

Cross-References

Disability benefits — exclusion from income tax, 15-30-111.

19-20-903. Medical examination of disability retiree. (1) Once each year during the first 5 years following the retirement of a member on a disability retirement allowance and once in every 3-year period thereafter, the retirement board may require a disability benefit recipient who has not yet attained the age of 60 to undergo a medical examination by a physician or physicians designated by the retirement board. The examination must be made at the place of residence of the benefit recipient or other place mutually agreed upon. Based on the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of the position held by the member when the member retired. If the board determines that the member is not incapacitated, the member's retirement benefit must be canceled. If the member disagrees with the board's determination, the member may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after the receipt of the notice of the status change.

(2) A member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be given preference by the member's former employer for the position held at the time of retirement or for a comparable position that becomes available within 1 year of cancellation of the disability retirement. The

member may agree to accept an offer of employment by an employer. Employment in any capacity by an employer terminates any right granted by this section. The fact that the former employee was retired on disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have. This section does not affect any requirement for the former employee to meet or to be able to meet professional certification and licensing standards unrelated to the previous disability, otherwise necessary for reinstatement to duty.

(3) If a disability benefit recipient who has not yet attained the age of 60 refuses to submit to a medical examination as required in subsection (1), the recipient's allowance may be discontinued until withdrawal of the refusal. If a refusal continues for 1 year, all rights in and to a disability pension may be revoked by the retirement board.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(b); amd. Sec. 2, Ch. 24, L. 1987; Sec. 19-4-903, MCA 1991; redes. 19-20-903 by Code Commissioner, 1993; amd. Sec. 25, Ch. 442, L. 1997.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1015.

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

19-20-904. Adjustment of allowance. (1) (a) Except as provided by subsection (1)(b), if a retiree receiving a disability retirement allowance is engaged in or is able to engage in a gainful occupation paying more than the difference between the retiree's retirement allowance and the retiree's average final compensation or the difference between the median salary of those members retired during the preceding fiscal year and the retiree's retirement allowance, whichever is greater, the retirement allowance must be reduced to an amount that, together with the amount earnable by the retiree, is equal to the retiree's average final compensation or the median salary of those members retired during the preceding fiscal year, whichever is greater.

(b) If a disabled retiree is reemployed with the same employer within 30 days from the member's effective date of retirement or if the retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement benefit must be terminated.

(2) If the disabled retiree's earning capacity is changed later, the retirement allowance may be further modified, but the new allowance may not exceed the retirement allowance originally granted or an amount that, when added to the amount earnable by the retiree, equals the retiree's average final compensation.

(3) The board may, in its discretion, require a recipient of a disability retirement allowance to annually submit an earning statement and any documentation necessary to support the earnings of the recipient.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(c); amd. Sec. 1, Ch. 197, L. 1983; amd. Sec. 3, Ch. 24, L. 1987; Sec. 19-4-904, MCA 1991; redes. 19-20-904 by Code Commissioner, 1993; amd. Sec. 7, Ch. 111, L. 1995; amd. Sec. 26, Ch. 442, L. 1997.

Cross-References

PERS — disability benefit reduced by earnings, 19-3-1103.

19-20-905. Cancellation of allowance and restoration of membership. (1) If a disabled retiree is employed full-time in a capacity that would otherwise meet the eligibility requirements of active membership, as provided under 19-20-302, the retiree's retirement allowance must cease. If the retiree is employed by an employer covered under this chapter, the retiree shall again become an active member of the retirement system. Any prior service certificate on the basis of which the member's service was computed at the time of the member's disability retirement must be restored to full force, and upon the member's subsequent retirement, the member must be credited with the prior service and all subsequent service as a member.

(2) If the member is restored to active membership on or after the attainment of the age of 55 years, the member's retirement allowance upon subsequent retirement may not exceed the

retirement allowance that the member would have received had the member remained in service during the period of the member's previous retirement or the sum of the retirement allowance that the member was receiving immediately prior to the member's last restoration to service and the retirement allowance that the member would have received on account of the member's service since the member's last restoration had the member entered service at that time as a new member.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(d); Sec. 19-4-905, MCA 1991; redes. 19-20-905 by Code Commissioner, 1993; amd. Sec. 27, Ch. 442, L. 1997.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1015.

Part 10
Death Benefits

Part Cross-References

PERS — survivorship benefits and death payments, Title 19, ch. 3, part 12.
Judges' retirement — survivorship benefits and death payments, Title 19, ch. 5, part 8.
Highway patrol retirement — survivorship benefits and death payments, Title 19, ch. 6, part 9.
Sheriffs' retirement — survivorship benefits and death payments, Title 19, ch. 7, part 9.
Game wardens' and peace officers' retirement — survivorship benefits and death payments, Title 19, ch. 8, part 10.
Police retirement — statewide plan — survivorship benefits and death payments, Title 19, ch. 9, part 11.
Firefighters' unified retirement — survivorship benefits and death payments, Title 19, ch. 13, part 9.

19-20-1001. Allowances for death of member. (1) If a member dies before retirement, the member's accumulated contributions must be paid to the member's estate or to the beneficiary that the member nominated by a written application in a manner prescribed by the board and filed with the retirement board prior to the member's death.

(2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the nominated beneficiary may elect to receive a retirement allowance. The retirement allowance must be determined as prescribed in 19-20-804(1) and section 5, Chapter 549, Laws of 1981, in the same manner as if the member elected option A provided for in 19-20-702(2)(a).

(b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:

(i) the first of the month following the date of death; or

(ii) the effective date of the member's retirement, as acknowledged in writing by the retirement system before the member's death.

(c) In the event that payments made to the beneficiary do not equal the amount of the member's accumulated contributions before the member's death, the difference between the total retirement allowance payments made and the amount of the accumulated contributions at the time of the member's death must be paid to the beneficiary's estate.

(3) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year before the member's death, a lump-sum death benefit of $500 is payable to the member's designated beneficiary.

(4) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to the member's death, the sum of $200 a month must be paid to each minor child of the deceased member until the child reaches 18 years of age.

(5) If the member nominated more than one beneficiary to receive payment of a benefit provided by this section upon the member's death, then:

(a) each beneficiary is entitled to share in that benefit; and

(b) if a beneficiary predeceases the member, the benefit must be divided among the surviving beneficiaries.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(part); amd. Sec. 8, Ch. 549, L. 1981; amd.

Sec. 4, Ch. 56, L. 1989; Sec. 19-4-1001, MCA 1991; redes. 19-20-1001 by Code Commissioner, 1993; amd. Sec. 28, Ch. 442, L. 1997; amd. Sec. 23, Ch. 45, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 45 in (1) near middle substituted "to the beneficiary that" for "to a person" and substituted "written application" for "written designation"; inserted (2)(b) providing for effective date of retirement allowance; in (2)(c) near beginning substituted "the beneficiary" for "a recipient" and at end substituted "beneficiary's estate" for "beneficiary"; inserted (5) concerning payment if member nominated more than one beneficiary; and made minor changes in style. Amendment effective March 16, 2001.

19-20-1002. Payments upon death of retiree. (1) In the event of the death of a member after retirement, a death benefit of $500 is payable to the designated beneficiary.

(2) In the event that payments made to a benefit recipient do not equal the amount of the member's accumulated contributions before the member's retirement, the difference between the total retirement allowance paid and the amount of the accumulated contributions must be paid to the beneficiary.

(3) If a deceased member had 5 or more years of creditable service and was retired at the time of death, the sum of $200 a month must be paid to each minor child of the deceased retiree until the child reaches 18 years of age.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(part); amd. Sec. 5, Ch. 56, L. 1989; Sec. 19-4-1002, MCA 1991; redes. 19-20-1002 by Code Commissioner, 1993; amd. Sec. 29, Ch. 442, L. 1997.

Cross-References

PERS — death payments to designated beneficiaries of retired members, 19-3-1210.
Judges' retirement — payments upon death from other causes, 19-5-802.
Highway patrol retirement — payments upon death from other causes, 19-6-902.
Sheriffs' retirement — payments upon death before retirement, 19-7-901.
Game wardens' and peace officers' retirement — nonduty-related death of member, 19-8-1003.
Police retirement — statewide plan — preretirement death benefits, 19-9-1101.
Firefighters' unified retirement — survivorship benefit, 19-13-902.

19-20-1003. Payment of death benefits. (1) Death benefits paid from the system are subject to the requirements of this section.

(2) Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations adopted under that section.

(3) The amount of benefits payable to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code.

(4) If the member dies before retirement benefits commence and a benefit is payable pursuant to 19-20-1001, distributions to the member's beneficiaries must begin as soon as administratively feasible and must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by the date on which the beneficiary is to receive the benefit and the beneficiary is eligible for a monthly benefit, the benefit must be paid as provided in 19-20-702(2)(d)(i)(A) or a lump sum must be paid if that is the only benefit due the beneficiary.

History: En. Sec. 25, Ch. 111, L. 1999.

Part 11
Group Insurance

19-20-1101. Withholding of group insurance premium from retirement allowance. A retired member who is a participant in an employer-sponsored group insurance plan may elect to have the monthly premium for such group insurance withheld from his retirement allowance by the retirement system and paid directly to the insurance carrier or employer of record at the time of retirement.

History: En. Sec. 1, Ch. 20, L. 1987; Sec. 19-4-1101, MCA 1991; redes. 19-20-1101 by Code Commissioner, 1993.

CHAPTER 21

UNIVERSITY SYSTEM OPTIONAL RETIREMENT PROGRAM

Part 1 — General Provisions

19-21-101. Authority to establish optional retirement program.
19-21-102. Definition of teachers' retirement system.
19-21-103. Duties of board of regents.
19-21-104 through 19-21-110 reserved.
19-21-111. Repealed.

Part 2 — Participation—Benefits

19-21-201. Participation in program.
19-21-202. Effect on rights under teachers' retirement system.
19-21-203. Contributions.
19-21-204 through 19-21-210 reserved.
19-21-211. Payment of benefits.
19-21-212. Exemption from taxation, legal process, and assessments.
19-21-213. Participation by employees in positions covered by public employees' retirement system.
19-21-214. Contributions and allocations for employees in positions covered under the public employees' retirement system.

Chapter Cross-References

Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement system, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.
Education, Title 20.
Teachers, superintendents, and principals, Title 20, ch. 4.
University System, Title 20, ch. 25.

Part 1
General Provisions

19-21-101. Authority to establish optional retirement program. The board of regents may establish an optional retirement program, as provided in this chapter, for the administrative officers and members of the instructional and scientific staff of the Montana university system. The program may be an independent plan or part of a larger plan with respect to some or all of the benefits provided. The benefits under the program must be provided through individual annuity contracts, either fixed or variable, or a combination of contracts, issued to and owned by the participants in the program. The program must comply with applicable sections of the Internal Revenue Code.

History: En. Sec. 1, Ch. 494, L. 1987; amd. Sec. 31, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 490 inserted last sentence requiring compliance with Internal Revenue Code; and made minor changes in style. Amendment effective July 1, 2001.

19-21-102. *(Temporary)* **Definition of teachers' retirement system.** In this chapter, "teachers' retirement system" means the teachers' retirement system provided for in Title 19, chapter 20.

19-21-102. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Definitions.** Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Program" means the optional retirement program established pursuant to this chapter.

(2) "Public employees' retirement system" means the retirement system established in 19-3-103.

(3) "Teachers' retirement system" or "system" means the teachers' retirement system provided for in Title 19, chapter 20.

History: En. Sec. 2, Ch. 494, L. 1987; amd. Sec. 36, Ch. 471, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

19-21-103. Duties of board of regents. The board of regents shall:

(1) act as fiduciaries of the program and exercise its fiduciary authority in the same manner that would be used by a prudent person acting in the same capacity who is familiar with the circumstances and in an enterprise of a similar character with similar aims;

(2) provide for the administration of the program;

(3) designate the company or companies from which the contracts are to be purchased and approve the form and content of the contracts, taking into consideration the:

(a) nature and extent of the rights and benefits to be provided by the contracts for participants and their beneficiaries;

(b) relationship of these rights and benefits to the amount of contributions to be made;

(c) suitability of these rights and benefits to the needs of the participants and the interests of the Montana university system in the recruitment and retention of administrative officers and members of the instructional and scientific staff; and

(d) ability of the designated company or companies to provide these rights and benefits.

History: En. Sec. 5, Ch. 494, L. 1987; amd. Sec. 32, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 490 inserted (1) regarding action as fiduciary and exercise of fiduciary authority; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Teachers' retirement — administration of system, Title 19, ch. 20, part 2.

19-21-104 through 19-21-110 reserved.

19-21-111. Repealed. Sec. 3, Ch. 419, L. 1997.

History: En. Sec. 9, Ch. 494, L. 1987; amd. Sec. 1, Ch. 365, L. 1991; amd. Sec. 2, Ch. 178, L. 1993.

Part 2
Participation — Benefits

19-21-201. *(Temporary)* **Participation in program.** (1) Except as provided in subsection (2), academic and professional administrative personnel with individual contracts under the authority of the board of regents are eligible for and may elect to participate in the optional retirement program instead of the teachers' retirement system. This election must be exercised:

(a) before January 1, 1988, for an eligible person hired before July 1, 1987;

(b) within 90 days after entry into service or before January 1, 1988, whichever is later, for a person hired in an eligible position on or after July 1, 1987; and

(c) within 30 days after receiving written notice of eligibility or before January 1, 1988, whichever is later, for an employee who becomes eligible to participate in the optional retirement program by reason of appointment, promotion, transfer, or reclassification to an eligible position.

(2) (a) An eligible person hired on or after July 1, 1993, shall become a member of the optional retirement plan unless the person is, on the date hired, an active, inactive, or retired member of a public retirement system created in Title 19, chapter 3 or 20.

(b) A person hired who is a member of a public retirement system created in Title 19, chapter 3 or 20, shall elect to:

(i) remain with the retirement system of which the person is a member on the date hired; or

(ii) become a member of the optional retirement plan.

(c) A person eligible to make an election under this subsection (2) shall exercise the election within 30 days of being hired.

(3) The election must be exercised by filing a written notice with the teachers' retirement system and the disbursing officer of the employer. The election is effective as of the date the notice is filed or January 1, 1988, whichever is later.

(4) If an eligible officer or staff member fails to exercise the election, as provided by this section, that person must remain or become a member of the teachers' retirement system.

(5) An election under this section is not effective unless the notice filed with the disbursing officer of the employer is accompanied by an appropriate application, if one is required, for the issuance of a contract or contracts under the program.

19-21-201. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Participation in program.** (1) Except as provided in subsection (2), academic and professional administrative personnel with individual contracts under the authority of the board of regents are eligible for and may elect to participate in the program instead of the teachers' retirement system. This election must be exercised:

(a) before January 1, 1988, for an eligible person hired before July 1, 1987;

(b) within 90 days after entry into service or before January 1, 1988, whichever is later, for a person hired in an eligible position on or after July 1, 1987; and

(c) within 30 days after receiving written notice of eligibility or before January 1, 1988, whichever is later, for an employee who becomes eligible to participate in the program by reason of appointment, promotion, transfer, or reclassification to an eligible position.

(2) (a) An eligible person hired on or after July 1, 1993, shall become a member of the program unless the person is, on the date hired, an active, inactive, or retired member of a public retirement system created in Title 19, chapter 3 or 20.

(b) An eligible person hired who is a member of a public retirement system created in Title 19, chapter 3 or 20, shall elect to:

(i) remain with the retirement system of which the person is a member on the date hired; or

(ii) become a member of the program.

(c) A person eligible to make an election under this subsection (2) shall exercise the election within 30 days of being hired.

(d) A person is ineligible to make an election under subsection (1) or (2) if the person previously elected to remain in the teachers' retirement system pursuant to subsection (1) or to remain in the public employees' retirement system pursuant to this subsection (2).

(3) The election must be exercised by filing a written irrevocable election with the teachers' retirement system and the disbursing officer of the employer. The election is effective as of the date the notice is filed or January 1, 1988, whichever is later.

(4) If an eligible officer or staff member fails to exercise the election, as provided by this section, that person shall remain or become a member of the teachers' retirement system.

(5) An election under this section is not effective unless the notice filed with the disbursing officer of the employer is accompanied by an appropriate application, if one is required, for the issuance of a contract or contracts under the program.

History: En. Sec. 3, Ch. 494, L. 1987; amd. Sec. 3, Ch. 178, L. 1993; amd. Sec. 37, Ch. 471, L. 1999; amd. Sec. 33, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: (Version effective on occurrence of contingency or July 1, 2002, whichever is earlier) Chapter 490 deleted former (6) that read: "(6) Subject to and as provided in 19-3-2112, a university system employee in a position covered under the public employees' retirement system may elect to participate in the program."

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

19-21-202. Effect on rights under teachers' retirement system. (1) An election under 19-21-201 to participate in the program is a waiver of all rights and benefits under the teachers' retirement system except as provided in this section.

(2) A member of the teachers' retirement system who elects to participate in the program is considered, for the purpose of determining eligibility for rights and benefits under that system, to be no longer employed in a capacity that allows active membership in that system as of the effective date of the election. Thereafter, the member is considered an inactive member of the system if qualified under 19-20-303, with the rights and privileges provided under 19-20-603(1). A member who elects to participate in the program who does not qualify as an inactive member under 19-20-303 is considered a terminated member of the system under 19-20-304(4).

(3) A person who elects to participate in the program is ineligible to be an active member of the teachers' retirement system while continuously employed in a position eligible to participate in the program.

History: En. Sec. 4, Ch. 494, L. 1987; amd. Sec. 38, Ch. 471, L. 1999; amd. Sec. 35, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 490 in (1) near beginning after "An election under" substituted "19-21-201" for "19-21-201(1) through (3) and (5)". Amendment effective July 1, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

19-21-203. *(Temporary)* **Contributions.** (1) Each optional retirement program participant shall contribute an amount equal to the member's contribution required under 19-20-602. The board of regents shall contribute an amount that, when added to the participant's contribution, is equal to 12% of the participant's earned compensation.

(2) (a) On or after July 1, 1997, the board of regents may:

(i) reduce the participant's contribution rate established in subsection (1) to an amount not less than 6% of the participant's earned compensation; and

(ii) increase the employer's contribution rate to an amount not greater than 6% of the participant's earned compensation.

(b) The sum of the participant's and employer's contributions made under subsection (2)(a) must remain at 12% of the participant's earned compensation.

(3) The board of regents shall determine whether the participant's contribution is to be made by salary reduction under section 403(b) of the Internal Revenue Code of 1954 or by employer pick-up under section 414(h)(2) of that code.

(4) The disbursing officer of the employer or other official designated by the board of regents shall pay both the participant's contribution and the appropriate portion of the regents' contribution to the designated company or companies for the benefit of the participant.

(5) The board of regents shall make the supplemental contributions to the teachers' retirement system as provided in 19-20-621 to discharge the obligation incurred by the Montana university system for the past service liability incurred by active, inactive, and retired members of the teachers' retirement system.

19-21-203. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Contributions — supplemental and plan choice rate contributions.** The following provisions apply to program participants not otherwise covered under 19-21-214:

(1) Each program participant shall contribute an amount equal to the member's contribution required under 19-20-602. The board of regents shall contribute an amount that, when added to the participant's contribution, is equal to 12% of the participant's earned compensation.

(2) (a) The board of regents may:

(i) reduce the participant's contribution rate established in subsection (1) to an amount not less than 6% of the participant's earned compensation; and

(ii) increase the employer's contribution rate to an amount not greater than 6% of the participant's earned compensation.

(b) The sum of the participant's and employer's contributions made under subsection (2)(a) must remain at 12% of the participant's earned compensation.

(3) The board of regents shall determine whether the participant's contribution is to be made by salary reduction under section 403(b) of the Internal Revenue Code of 1954 or by employer pickup under section 414(h)(2) of that code.

(4) The disbursing officer of the employer or other official designated by the board of regents shall pay both the participant's contribution and the appropriate portion of the board of regents' contribution to the designated company or companies for the benefit of the participant.

(5) The board of regents shall make the supplemental contributions to the teachers' retirement system, as provided in 19-20-621, to discharge the obligation incurred by the Montana university system for the past service liability incurred by active, inactive, and retired members of the teachers' retirement system.

History: En. Sec. 6, Ch. 494, L. 1987; amd. Sec. 4, Ch. 178, L. 1993; amd. Sec. 2, Ch. 419, L. 1997; amd. Sec. 39, Ch. 471, L. 1999; amd. Sec. 36, Ch. 490, L. 2001.

Compiler's Comments

2001 Amendment: (Version effective on occurrence of contingency or July 1, 2002, whichever is earlier) Chapter 490 inserted introductory clause regarding program participants; deleted former (5)(b) that read: "(b) For employees electing to become program members pursuant to 19-3-2112, the board of regents shall, in addition to other contributions required under this section, contribute to the public employees' retirement system the plan choice rate provided in 19-3-2117(2)(b) and adjusted pursuant to 19-3-2121"; and made minor changes in style.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Cross-References

PERS — contributions, Title 19, ch. 3, part 3.
Judges' retirement fund — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — annuity savings fund — member's contribution, 19-20-602.
Teachers' retirement — pension accumulation fund — employer's contribution, 19-20-605.

19-21-204 through 19-21-210 reserved.

19-21-211. Payment of benefits. No retirement, death, or other benefit may be paid by the state or the board of regents under the optional retirement program. Benefits are payable to a participant and his beneficiaries only by the designated company or companies in accordance with the terms of the contracts.

History: En. Sec. 7, Ch. 494, L. 1987.

19-21-212. Exemption from taxation, legal process, and assessments. Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, contracts, benefits, and contributions under the optional retirement program and the earnings on the contributions are:

(1) except for a retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii), exempt from any state, county, or municipal tax;
(2) not subject to execution, garnishment, attachment, or other process;
(3) not covered or assessable by an insurance guaranty association; and
(4) unassignable except as specifically provided in the contracts.

History: En. Sec. 8, Ch. 494, L. 1987; amd. Sec. 17, Ch. 823, L. 1991; amd. Sec. 20, Ch. 552, L. 1997.

Cross-References

Benefits tax-exempt, 15-30-111.

Residential property tax credit for elderly — partial exclusion of retirement benefits from income, 15-30-171.

The Public Employees' Retirement Act — exemption from taxes and legal process — exceptions, 19-2-1004.

Firefighters' retirement — protection of benefits from legal process and taxation — nonassignability, 19-18-612.

Police retirement — local funds — protection of benefits from legal process and taxation, 19-19-504.

Teachers' retirement — exemption from taxation and legal process — exceptions, 19-20-706.

Execution of judgment, Title 25, ch. 13.

Garnishment — earnings of judgment debtor, 25-13-614.

Prejudgment attachment, Title 27, ch. 18.

Exempt property — bankruptcy proceeding, 31-2-106.

Exemption of benefits from liens of health care providers, 71-3-1118.

19-21-213. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Participation by employees in positions covered by public employees' retirement system.** Subject to and as provided in 19-3-2112, a university system employee in a position covered under the public employees' retirement system may elect to participate in the program.

History: En. Sec. 34, Ch. 490, L. 2001.

Compiler's Comments

Contingent Effective Date: Section 43(2), Ch. 490, L. 2001, provided: "(2) [Sections 34 and 37] [19-21-213 and 19-21-214] are effective contingent upon certification by the public employees' retirement board pursuant to section 65, Chapter 471, Laws of 1999, that the defined contribution plan is ready to become operational or on July 1, 2002, whichever is earlier."

19-21-214. *(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)* **Contributions and allocations for employees in positions covered under the public employees' retirement system.** (1) The contribution rates for employees in positions covered under the public employees' retirement system who elect to become program members pursuant to 19-3-2112 are as follows:

(a) the member's contribution rate must be the rate provided in 19-3-315; and

(b) the employer's contribution rate must be the rate provided in 19-3-316.

(2) Subject to subsection (3), the employer's contribution under subsection (1)(b) must be allocated as follows:

(a) 4.49% of compensation must be allocated to the participant's program account;

(b) 2.37% of compensation must be allocated to the defined benefit plan under the public employees' retirement system as the plan choice rate; and

(c) 0.04% of compensation must be allocated to the education fund pursuant to 19-3-112(1)(c).

(3) The allocations under subsection (2) are subject to adjustment by the public employees' retirement board, but only as described in and in a manner consistent with the express provisions of 19-3-2121.

History: En. Sec. 37, Ch. 490, L. 2001.

Compiler's Comments

Contingent Effective Date: Section 43(2), Ch. 490, L. 2001, provided: "(2) [Sections 34 and 37] [19-21-213 and 19-21-214] are effective contingent upon certification by the public employees' retirement board pursuant to section 65, Chapter 471, Laws of 1999, that the defined contribution plan is ready to become operational or on July 1, 2002, whichever is earlier."

CHAPTERS 22 THROUGH 49

RESERVED

CHAPTER 50

DEFERRED COMPENSATION

Part 1 — General Provisions

19-50-101. Definitions.
19-50-102. Deferred compensation programs permitted — rules.
19-50-103. No effect on other retirement programs — taxes deferred.
19-50-104. Catchup eligibility and normal retirement age.

Part 2 — Administration

19-50-201. Board authorized to make contracts with political subdivisions.
19-50-202. Administration of program.
19-50-203. Payments authorized.
19-50-204. Public entity not to be liable.
19-50-205 reserved.
19-50-206. Repealed.

Part 1
General Provisions

19-50-101. Definitions. For the purposes of this chapter, unless a different meaning is plainly implied by the context, the following definitions apply:

(1) "Administrator" or "board" means the public employees' retirement board created in 2-15-1009 or an appropriate officer of a political subdivision.

(2) "Deferred compensation" means that income which an employee may legally defer in a deferred compensation plan established under this chapter pursuant to the rulings of the internal revenue service and which, while invested, is exempt from state and federal income tax on the employee's contribution and on the interest, dividends, and capital gains until ultimately distributed to the employee.

(3) "Eligible deferred compensation plan" means a plan meeting the requirements of section 457 of the Internal Revenue Code.

(4) "Employee" means any person, including independent contractors and elected officials, receiving compensation from the state or a political subdivision for performing services.

(5) "Fund" means the state deferred compensation investment account.

(6) "Participant" means an employee enrolled in the plan.

(7) "Political subdivision" means any city, town, county, or other political subdivision of the state of Montana.

History: En. 68-2704 by Sec. 4, Ch. 264, L. 1974; R.C.M. 1947, 68-2704; amd. Sec. 1, Ch. 472, L. 1981; Sec. 19-2-101, MCA 1991; redes. 19-50-101 by Code Commissioner, 1993; amd. Sec. 67, Ch. 471, L. 1999.

19-50-102. Deferred compensation programs permitted — rules. (1) The state or a political subdivision may establish deferred compensation plans that are eligible under section 457 of the Internal Revenue Code of 1954 (26 U.S.C. 457), as amended or superseded, and in compliance with regulations of the U.S. department of the treasury. Eligible deferred compensation plans for employees may be established in addition to any retirement, pension, or other benefit plan administered by the state or a political subdivision.

(2) An employee may enter into a written agreement with the state or a political subdivision to defer a part of the employee's compensation to one or more of the investment options provided in subsection (4) for the purpose of investment as provided by this chapter. The total amount deferred may not exceed the employee's annual salary and may not exceed the amounts permitted under applicable sections of the Internal Revenue Code.

(3) Compensation deferred pursuant to this chapter is included as compensation for the purpose of computing retirement or pension benefits.

(4) The board or an appropriate officer of a political subdivision shall from time to time select the type of investment options and the financial institutions or entities in which state or

political subdivision employee deferred compensation plan funds may be invested. The board or an appropriate officer of a political subdivision shall notify affected plan members of potential changes in investment options and financial institutions before the changes are made. The investment options and entities may include:

(a) a state deferred compensation investment fund established pursuant to Title 17 for the purpose of administering a state-invested deferred compensation plan. All contributions made by participants in the state deferred compensation investment fund and all interest or increase in the fund must be credited to the fund. These state-invested funds may be commingled with other state investment funds, but separate accounting must be maintained. The assets of the fund must be maintained for the benefit of participants and may not be diverted except for paying the reasonable expenses for administering the state deferred compensation investment fund.

(b) savings accounts in federally insured financial institutions;

(c) life insurance contracts and fixed annuity and variable annuity contracts from companies that are licensed to do business in the state and subject to regulation by the insurance commissioner;

(d) investment funds managed pursuant to investment services contracts maintained by the board or an appropriate officer of a political subdivision with investment managers registered with the United States securities and exchange commission;

(e) mutual funds provided through contracts maintained by the board or an appropriate officer of a political subdivision with mutual fund companies regulated by the United States securities and exchange commission; or

(f) a combination of the items in subsections (4)(a) through (4)(e).

(5) The deferred compensation plan funds invested pursuant to this section and the income from those funds must be held in a trust, custodial account, or insurance contract for the exclusive benefit of participants and their beneficiaries.

(6) The administrator may allocate any necessary costs against the assets and interest earnings accumulated in funds, accounts, or contracts established under this chapter.

(7) The board or appropriate officer of a political subdivision shall promulgate rules not inconsistent with this chapter for the proper administration of deferred compensation plans established under this chapter.

History: En. 68-2701 by Sec. 1, Ch. 264, L. 1974; amd. Sec. 1, Ch. 60, L. 1977; R.C.M. 1947, 68-2701; amd. Sec. 2, Ch. 472, L. 1981; Sec. 19-2-102, MCA 1991; redes. 19-50-102 by Code Commissioner, 1993; amd. Sec. 1, Ch. 37, L. 1997; amd. Sec. 109, Ch. 42, L. 1997; amd. Sec. 68, Ch. 471, L. 1999.

Cross-References

Investment of public funds and retirement system assets, Art. VIII, sec. 13, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Financial Institutions, Title 32.

Life insurance, Title 33, ch. 20.

Life insurance — annuity contract provisions, Title 33, ch. 20, part 3.

19-50-103. No effect on other retirement programs — taxes deferred. The deferred compensation program established by this chapter shall exist and serve in addition to retirement, pension, or benefit systems, including plans qualifying under section 403(b) of the Internal Revenue Code of 1954, established by the state or a political subdivision, and no deferral of income under the deferred compensation program shall affect a reduction of any retirement, pension, or other benefit provided by law. However, any sum deferred under the deferred compensation program shall not be subject to taxation until distribution is actually made to the participant or his beneficiary because of separation from service, retirement, or unforeseeable emergency. For purposes of this chapter any qualified private pension plans now in existence shall qualify.

History: En. 68-2706 by Sec. 6, Ch. 264, L. 1974; R.C.M. 1947, 68-2706; amd. Sec. 3, Ch. 472, L. 1981; Sec. 19-2-103, MCA 1991; redes. 19-50-103 by Code Commissioner, 1993.

Cross-References

Local government not to affect retirement rights established by state law — may establish additional systems, 7-1-111.

Construction of net income, 15-30-102.

19-50-104. Catchup eligibility and normal retirement age. For the purposes of determining a participant's eligibility to catch up on making the maximum annual deferrals allowable, normal retirement age must be specified in writing by the participant and must be no earlier than:

(1) the age at which the participant is eligible to retire pursuant to the participant's Title 19 retirement system because of the participant's age, length of service, or both, without disability, and with the right to receive immediate retirement benefits without actuarial or similar reduction because of retirement before a specified age; or

(2) 60 years of age if the participant is not a member of a Title 19 retirement plan or is a member of a defined contribution retirement plan.

History: En. Sec. 129, Ch. 99, L. 2001.

Compiler's Comments

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

Part 2
Administration

19-50-201. Board authorized to make contracts with political subdivisions. (1) Effective July 1, 1983, a political subdivision may become a contracting employer and make all or specified groups of its employees eligible to participate in the state-administered deferred compensation program by a contract entered into and between the board and the legislative body of the political subdivision. The contract may include any provisions that are consistent with this chapter and necessary for the administration of the deferred compensation program.

(2) The approval and termination of the contract shall be subject to the following provisions:

(a) The legislative body of the political subdivision shall adopt a resolution to enter into a contract with the board authorizing its employees to participate in the state-administered deferred compensation program. The resolution must contain a summary of the major provisions of the state-administered deferred compensation program.

(b) The contract must specify that the political subdivision agrees that the board is the administrator of the deferred compensation program and agrees to the rules and conditions established by the board for the proper administration of the plan.

(c) The contract may be revoked or amended in the manner prescribed in the original approval of contracts.

History: En. 68-2702 by Sec. 2, Ch. 264, L. 1974; amd. Sec. 2, Ch. 60, L. 1977; R.C.M. 1947, 68-2702; amd. Sec. 4, Ch. 472, L. 1981; Sec. 19-2-201, MCA 1991; redes. 19-50-201 by Code Commissioner, 1993; amd. Sec. 69, Ch. 471, L. 1999.

Cross-References

Department of Administration, Title 2, ch. 15, part 10.
Contracts generally, Title 28, ch. 2, 3.

19-50-202. Administration of program. The deferred compensation program shall be administered by the board or the appropriate officer designated by a political subdivision. Payroll deductions shall be made, in each instance, by the appropriate payroll officer. The administrator shall protect the interests of program participants and safeguard the assets of the deferred compensation plan and shall contract with private corporations, institutions, or individuals for administrative and marketing services. The administrator may solicit bids for options under 19-50-102. All contracts with marketing representatives must provide that all options in 19-50-102 be presented in an unbiased manner and in a manner so as to conform to applicable rules promulgated by the administrator, be reported on a periodic basis to all employees participating in eligible deferred compensation plans, and not be the subject of unreasonable solicitation of employees to participate in the program. All costs or fees in relation to the marketing of options provided under 19-50-102 shall be paid by the underwriting companies selected by the administrator or by the interest earnings accruing to the assets of the state deferred compensation investment fund.

History: En. 68-2703 by Sec. 3, Ch. 264, L. 1974; R.C.M. 1947, 68-2703; amd. Sec. 5, Ch. 472, L. 1981; Sec. 19-2-202, MCA 1991; redes. 19-50-202 by Code Commissioner, 1993; amd. Sec. 70, Ch. 471, L. 1999.

Cross-References

Employer to furnish itemized statement of deductions, 39-3-101.

19-50-203. Payments authorized. Notwithstanding any other provision of law to the contrary, the board or a political subdivision is hereby authorized to make payments to eligible deferred compensation plans designated by this chapter. Such payments shall not be construed to be a prohibited use of the general assets of the state or a political subdivision.

History: En. 68-2705 by Sec. 5, Ch. 264, L. 1974; R.C.M. 1947, 68-2705; amd. Sec. 7, Ch. 472, L. 1981; Sec. 19-2-203, MCA 1991; redes. 19-50-203 by Code Commissioner, 1993; amd. Sec. 71, Ch. 471, L. 1999.

Cross-References

Public funds — investments, Title 17, ch. 6, part 2.

19-50-204. Public entity not to be liable. There shall be no financial liability of the state or a political subdivision for any investment losses incurred by any eligible deferred compensation plan established under this chapter.

History: En. 68-2707 by Sec. 7, Ch. 264, L. 1974; R.C.M. 1947, 68-2707; amd. Sec. 8, Ch. 472, L. 1981; Sec. 19-2-204, MCA 1991; redes. 19-50-204 by Code Commissioner, 1993.

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.

19-50-205 reserved.

19-50-206. Repealed. Sec. 73, Ch. 471, L. 1999.

History: En. Sec. 6, Ch. 472, L. 1981; Sec. 19-2-206, MCA 1991; redes. 19-50-206 by Code Commissioner, 1993.

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